

**FEDERAL COMMUNICATIONS COMMISSION**  
**Washington, D.C. 20554**

*In the Matter of* Rules and Regulations  
Implementing the Telephone Consumer Protection  
Act of 1991,

Petition for Declaratory Ruling by ContextMedia,  
Inc. d/b/a Outcome Health

CG Docket No. 02-278

DA 17-1054

**Comments Opposing the Petition for Declaratory Ruling, filed by Jeremy M. Glapion on  
behalf of Consumer-Plaintiff Christy Griffith.**

**Summary**

I, Jeremy M. Glapion, Plaintiff's counsel in the matter against ContextMedia, Inc. d/b/a Outcome Health, file these comments on behalf of consumer-Plaintiff Christy Griffith, Plaintiff in the case against Outcome, opposing Outcome's request for an exemption from the Telephone Consumer Protection Act based on a claimed technical error.

Outcome seeks to paint itself as the innocent victim of an unpredictable technical glitch that led to its failures to honor opt-out requests, but this is far from the truth. Outcome, in its haste to implement its automated text messaging program, rushed the program's development, including the precise aspect of the program that contributed to the alleged glitch. Once live, Outcome left the program to fend for itself, failing to implement even a cursory monitoring process that would have easily allowed Outcome to discover that its subscribers were unable to opt out (based on the dozens of repeated opt-out requests). Furthermore, even after being put on actual notice that its opt-out process may not be working, Outcome continued the program, and still failed to implement any sort of monitoring process. Outcome only stopped the program once it was threatened with the lawsuit it now faces.

Outcome's failures to properly honor opt-out requests may also have root in the fraud it allegedly perpetrated against its clients and investors, for which it is now being investigated by the Department of Justice, and for which it is now being sued. Outcome appears to have used its text messaging program to show "engagement" with its advertising. Had Outcome properly tracked opt-outs, the "engagement" numbers would not have been as strong as they were if Outcome chose to ignore them (as it did).

Whatever the reason(s) for a subscriber's inability to opt-out from Outcome's text messaging program, it was Outcome's own failures that led to consumers, like my client, Plaintiff Christy Griffith, to be bombarded with dozens – sometimes hundreds – of unwanted text messages for months after explicitly asking Outcome to "stop" texting.

More broadly, Outcome's petition, and the facts and circumstances surrounding the related case, show just why Outcome's proposed exemption is both undesirable and unworkable. It is impossible to determine where Outcome's negligence ended and the purported "technical glitch" began, and it is difficult to imagine a meaningful exemption that would not be so broad as to exempt such negligence, or so narrow as to be unnecessary. Any exemption would also necessarily be intensely factual (and invariably pled as a defense), meaning cases in which the exemption was anticipated would still be filed and proceed to discovery. However, these cases would now be subject to increased costs on both sides, as the parties would be forced to undertake lengthy, intrusive, and expensive discovery to uncover the "genesis" of any "technical error." This would also increase the burden on our courts.

Simply put, Outcome's proposed exemption is a last-ditch effort to escape responsibility for its own negligent conduct. It is unworkable and would harm both businesses and consumers. Accordingly, I respectfully request that the Commission deny Outcome's petition.

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## **I. Introduction**

Petitioner, ContextMedia, Inc. d/b/a Outcome Health (“Outcome”), asks the Commission to exempt from the Telephone Consumer Protection Act’s (“TCPA”) purview calls or text messages that resulted from a purported technical glitch. But, in looking to paint itself as a good actor being unfairly persecuted, Outcome omits key facts that show just why this proposed exemption is unworkable. It is impossible to separate where Outcome’s negligence ended and the “technical glitch” began. The two are intertwined, as would almost always be the case.

Indeed, the mere fact that Outcome’s omission of a few key facts could make it look like the victim of a machine gone unpredictably and unforeseeably rogue – when this was not actually the case – in and of itself shows how unworkable is Outcome’s request. Were an exception to be granted, “technical glitch” will become an invariably pled defense in every 227(b) TCPA case. Unpacking the legitimacy and contours of such defense, and determining the ultimate responsibility for the glitch, will significantly increase litigation costs to both sides and further burden the courts.

Accordingly, and for the reasons set forth in more detail below, I, on behalf of Glapion Law Firm, oppose.

## **II. Background of *Griffith v. ContextMedia*, Case No. 16-cv-2900 (N.D. Ill.)**

Outcome’s Petition arises from the putative class action in *Christy Griffith v. ContextMedia Health, LLC d/b/a Outcome Health*, 16-cv-2900 (N.D. Ill.).

### **a. Case History**

On March 7, 2016, Plaintiff, Christy Griffith, filed a putative class action (followed by an Amended Complaint on June 9, 2016 and a Second Amended Complaint<sup>1</sup> on July 26, 2017),

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<sup>1</sup> Exhibit A.



related to Outcome's "Healthy Tips" text message campaign. The text messages sent as part of this campaign were substantially in the form as follows:

CMH TIPS: Eat a healthy breakfast, and smaller meals throughout the day. This will help keep your energy up and your metabolism going.

\* \* \*

CMH TIPS: Plate your food! When you portion food onto a plate & put the bag away before eating, it is much easier not to overeat.

Eventually, Outcome added opt-out language<sup>2</sup> to these texts:

CMH TIPS: If you live in a cold climate, still exercise! Walk around the mall or workout in your living room to get your heart pumping.  
To opt-out, reply STOP

\* \* \*

CMH TIPS: Try swapping potatoes for cauliflower for a low-carb meal. Mash them, broil them, or make a cauliflower "potato" salad.  
To opt-out, reply STOP

Plaintiff does not dispute that she initially provided her consent for these messages. Instead, Plaintiff alleges that, on more than two dozen occasions, she replied to one of these "Healthy Tips" text messages with "stop," as instructed by several of the text messages themselves.<sup>3</sup> For example, in 2015, on November 29, December 23, December 24, December 27, December 28, December 29, among other dates, Plaintiff replied "STOP" in response to Outcome's messages. In 2016, Plaintiff replied "STOP" on January 1, January 2, January 3, January 5, January 23 (five times), February 4, and February 5. Despite these revocations of consent, the text messages continued. Plaintiff was sent more than 80 text messages after the first time she revoked consent.<sup>4</sup>

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<sup>2</sup> Outcome's assertion that its messages "always included clear opt-out instructions", Outcome Petition at p. 5, is false.

<sup>3</sup> Exhibit A, ¶¶ 23-24.

<sup>4</sup> This contradicts Outcome's assertion that, after someone opted out, "Outcome would not send

Far from being a frivolous case, these unstoppable text messages were particularly offensive and annoying to Plaintiff Griffith. As Plaintiff Griffith stated in her deposition:

I was very frustrated that by ignoring my requests for them to stop, I would get these text messages at home, at work. I'd get them volunteering at my kids' school. I would get them while I was in the hospital with my daughter and her oncologist. I would get them while I was driving. I would get them on vacation. I told them to stop and they wouldn't.<sup>5</sup>

The fact that Outcome's texts would disturb Plaintiff Griffith's trips to the hospital with her daughter is particularly significant. Plaintiff Griffith's daughter had recently beaten cancer, and these trips were follow up appointments related to that cancer. It is not difficult to understand the added frustration that would come from receiving text messages on such occasions from a company (or anyone) that has been repeatedly told to stop.

The case was exclusively brought under 47 U.S.C. § 227(b), and is based only on texts sent after documented revocation.

Discovery has since shown that 2,239 others continued to receive text messages from Outcome after texting "stop" or "stop cmh tips" (the latter was another method Outcome advertised for persons to unsubscribe.) Some of these persons were sent as many as 270 text messages after saying stop. The median is 49 and the average is 57. There are 128,293 total text messages.

The Court-ordered fact discovery period has concluded. Plaintiff's Motion for Class Certification is fully briefed. The proposed Class is defined as:

Plaintiff and all persons within the United States to whose cellular telephone number Defendant ContextMedia Health, LLC sent, between July 28, 2015 and March 31, 2016, a text message, other than an opt-out confirmation text message, as part of its "Healthy Tips" campaign, after Defendant's records or the records of any entity with whom Defendant contracted to provide text messaging services, indicate that the telephone number to which the text messages were sent had

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any further text messages to these mobile numbers." Outcome Petition, p.5.

<sup>5</sup> Exhibit B (Griffith Depo., 41:25-42:7).

previously sent a text message with the single word “STOP” or the single phrase “STOP CMH TIPS”, regardless of capitalization.

(“Class”).

Plaintiff has submitted an expert report. Outcome has not submitted any expert report, nor has it sought to rebut or depose Plaintiff’s expert. The deadline for Outcome to submit its own report has long passed.

#### **b. Outcome’s Automatic Telephone Dialing System**

Outcome built and developed an in-house application called “HealthBlaster” for use with its “Healthy Tips” program (“HealthBlaster” or the “Application”). The HealthBlaster application used a third-party company, Twilio, to interface to the telephone company networks, enabling text messages to be sent and received. The HealthBlaster application automated the sending of these text messages by operating in conjunction with a scheduling process. At a specific time each day, this scheduler would invoke a bulk transmission facility in the Application. The bulk transmission facility would fetch that day’s healthy tip message from an external list. It would then scan the database and extract every telephone number marked as “subscribed.” The Application would then send a request to Twilio containing the phone number and the message to be sent, and it would do this for each of the telephone numbers extracted. Twilio would then pass this to the carriers for delivery to the corresponding telephone number.

HealthBlaster had several other pertinent functions. First, it automatically tracked subscriptions. To do this, the application automatically analyzed incoming text messages (sent to its dedicated short code and passed along by Twilio). If a text message was received from a number not already in the database of subscribers, the Application assumed it was a subscription request, regardless of the content of the message. In other words, a text message containing *anything* other than “stop” or one of two other related phrases would be taken as a subscribe request from that

particular telephone number. It then added this number to its database, and sent a message back to the telephone number asking them to confirm the subscription request by responding with a “Y”.

Second, the Application allowed administrators to provide it with a computer file containing a list of telephone numbers. When provided, the Application would add each of these numbers to the database, and would automatically flag each telephone number as subscribed, so that numbers added using this method would automatically receive subsequent HealthBlaster text messages. Per Outcome’s 30(b)(6) testimony and information in discovery, this was used to import subscribers from an old database (for use with a previous text message provider, Signal HQ) into the newly created HealthBlaster database, to be used with Twilio.<sup>6</sup>

Finally, the application was ostensibly intended to automate the process of allowing subscribers to opt-out by sending the message “STOP” or “STOP CMH TIPS”. When HealthBlaster received such a message from a number, it would find that number in the database and unset the subscribed status. However, the entry was not removed from the database.

### **c. The “Glitch”**

According to Outcome, an “unknowable” and “inadvertent” technical error in its HealthBlaster application led to the applications failure to properly honor opt-out requests. Specifically, Outcome claims that Signal HQ, its previous text message provider, included a “carriage return” character after each number. Twilio, when extracting incoming telephone numbers, did not. Accordingly, when Outcome manually imported the telephone numbers from Signal HQ into the new HealthBlaster database for use with Twilio, those subscribers were added to the HealthBlaster database with the carriage return character. When one of these imported subscribers sought to unsubscribe, the HealthBlaster application would look for the unsubscribe

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<sup>6</sup> Exhibit C (Pathervellai Depo., 26:7-27:20).

request *without* the “carriage return” character and would be unable to find it to properly unsubscribe that number. Outcome claims that those who unsubscribed while Outcome’s text messages were under the management of Signal HQ had no issues, but the population of people it manually transferred from the Signal HQ database to the Twilio database were unable to opt out.

This theory requires the Commission (and opposing commenters) to take Outcome’s word on this. Outcome has submitted absolutely no evidence supporting its claim. It has not submitted an expert report explaining the glitch, nor has it provided any discovery or testimony demonstrating that this was indeed a reason, or the only reason, Outcome failed to honor opt out requests. It has also not produced any documents related to opt-out requests received while using Signal HQ, making it impossible to evaluate its claims that its opt-out request was flawless at that time.

### **III. Discussion**

Taking Outcome’s claims as to the genesis of the glitch at face value, this glitch was not unknowable, and it may not have been inadvertent. Instead, it was the result of Outcome’s own negligent decisions in the development process. It was Outcome that rushed the development of the HealthBlaster application, and rushed it live with inadequate testing. It was Outcome that chose to include the “carriage return” character in the telephone numbers when manually importing those numbers into its HealthBlaster application. And it was Outcome that chose to allegedly defraud its investors and advertising partners by inflating metrics, which may have included metrics related to the Healthy Tips program. *See* Section II(c), *infra*.

It is not unfair “to require that one who deliberately goes perilously close to an area of proscribed conduct shall take the risk that he may cross the line.”<sup>7</sup> Outcome, in its haste to grow,

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<sup>7</sup> *Boyce Motor Lines, Inc. v. United States*, 342 U.S. 337 (1952).

released an unfinished and poorly designed application to manage its automated text message program, with little in the way of continued monitoring or auditing, despite its supposedly acute awareness of the TCPA.<sup>8</sup> This alleged glitch did not occur “despite” Outcome’s diligence<sup>9</sup>; it occurred because of Outcome’s lack of diligence. Outcome’s failures before, during, and after creation of the HealthBlaster application – not some rogue machine – are what led to the TCPA violations complained about, and caused immense frustration to thousands of persons, including Plaintiff Griffith. The case against Outcome is not frivolous, but instead directly implicates the very purposes of the TCPA.

**a. Outcome’s Own Negligence Directly Caused the Supposed “Glitch.”**

During the development of the HealthBlaster application, several employees expressed concerns that the product was not finished as the “go live” date approached. On July 28, 2015, Ernesto Rodriguez, an Outcome employee involved in the development of HealthBlaster, expressed concerns about the possibility of double messaging (i.e. messages being sent to the same number twice).<sup>10</sup> In response, Lee Ebreo, another Outcome employee involved in the development of HealthBlaster, said this should not be a problem and instructed the Outcome team to “accelerate” transitioning the subscribers from the old database to the new database.<sup>11</sup>

Based on outgoing text message logs Outcome produced in discovery, the program went live two days later – July 30, 2015 – for at least some of the subscribers. Yet the application was not finished and Outcome knew this to be the case. On that same day, Ryan Postel, an Outcome employee involved in the development of HealthBlaster, wrote that prior to going live, the development team needed to build a process for opt-in confirmations, a weekly opt-out message,

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<sup>8</sup> Outcome Petition, p.5.

<sup>9</sup>*Id.* at p.9.

<sup>10</sup> Exhibit D.

<sup>11</sup> *Id.*

and opt-out confirmations.<sup>12</sup>

On August 4, the same employee followed up and said that Outcome needed to be live with the text program as of the previous Friday, and asked for an update on the requirements that were supposed to be implemented before going live “ASAP”.<sup>13</sup> The employee most responsible for the code-level development, Jonathan Pauli, wrote back asking if they should just go live with what they had, stating that “it seems to be working fine.”<sup>14</sup> Mr. Pauli stated that all he had to do to go live is import about 9,000 people. He was instructed to do so, and that they would work on the remaining requirements while it was live. These 9,000 people to be imported were imported through the text-file process discussed in Section I(B), *supra* – the process which Outcome now claims contributed to its “unknowable” technical glitch.<sup>15</sup>

This last point is important for a separate reason: it was Outcome that chose which subscribers to import into its HealthBlaster database and how to import those subscribers. Outcome programmed a custom “task” into its application that would import any number placed into a text file into its database. These numbers were manually entered into the text file, and then a command was run to add those numbers to the HealthBlaster database and mark those numbers as subscribed.<sup>16</sup> As such, whether the numbers added had a “carriage return” character was *directly* the fault of Outcome in choosing how to enter those numbers. Presumably, the rush to go live directly contributed to Outcome making the wrong decision on how to import them.

This was just not the unknown, unknowable, and inadvertent technical glitch Outcome claims it to be. Outcome’s opt-out process failed because it chose to rush its product to market

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> Exhibit C (Pathervellai Depo., 26:7-27:20).

<sup>16</sup> *Id.* at 51:2-6.

despite its awareness that the program was incomplete, and despite inadequate testing. Outcome, and nothing or no one else, is to blame.

**b. Outcome Was Put On Notice That its Opt-Out Process Was Not Working.**

Outcome claims in its petition that “in March 2016” outcome received notice that its unsubscribe process may not have been working properly, and, “[a]s soon as Outcome learned about this issue, the company immediately halted the Healthy Tips program to ensure its compliance with the TCPA and the Commission’s rules.”<sup>17</sup> This is not true. Outcome was put on notice of the problems more than five months before it stopped its program.

On October 2, 2015, an individual named Benny Inman reached out to Outcome via the contact form on its website, stating “I want to know to [sic] stop your texts to my phone” and providing his phone number.<sup>18</sup> The following morning, this was forwarded by an Outcome employee named Matt Garms to Marshall Shen, an Outcome employee involved with the development of the HealthBlaster application.<sup>19</sup> Mr. Garms wrote “Marshall – We have another one ...”, suggesting that, although Benny Inman’s request was the earliest opt-out related communication produced in discovery, it was not the first instance in which someone contacted Outcome about its flawed opt-out process.

This request made its way to Ernesto Rodriguez, another Outcome employee involved with the development of the HealthBlaster application, who asked Mr. Shen to confirm, among other things, whether “this user was removed from the list from the fix you applied a few days ago.”<sup>20</sup>

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<sup>17</sup> Outcome Petition at pp. 5, 9.

<sup>18</sup> Exhibit E.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* Later in the email chain, Mr. Rodriguez suggests the person may have just been following up on an old unsubscribe request from August 14, 2015 but had not received any more messages. This is illogical. If the messages had stopped when requested, there would be no need for Mr. Inman to have followed up two months later asking how to stop the messages.



This further suggests that Outcome was aware of a flaw in its opt-out process and that a previous fix may have failed.

On March 4, 2016<sup>21</sup> an individual named Carmella Markovich wrote to Outcome that she would “like to OPT-OUT of CMH TIPS and I have tried several time (sic) to opt-out via text message by replying stop to no avail. These messages are using up to (sic) much of my text allowance and I want them to stop. I’ve tried calling the phone number 1-866-500-6346 and cannot get through ... PLEASE STOP SENDING ME TEXT MESSAGES WITH DIETARY TIPS (21831).”<sup>22</sup>

As with Mr. Inman, this request was forwarded along. It was first forwarded from Mr. Garms to an individual named Travis Kemp, asking “Who can stop these?”, and Mr. Kemp responding “Ernesto can remove these ...”.<sup>23</sup> The request made its way to Lee Ebreo, then Outcome’s Vice President of Engineering, who sent the request over to Brian Clarkson and Ernesto Rodriguez writing “here is another to unsubscribe from CMH Tips.”<sup>24</sup>

Once again, the language used in the email forward – “another to unsubscribe” – confirms that Outcome was previously contacted by individuals unable to subscribe through the automated process, and that had made a practice of manually unsubscribing persons, rather than explaining to them the automated opt-out process, which it appears to have known was not working, or shutting down the program while the issue was determined.

Despite these complaints (both produced and unproduced), one of Outcome’s 30(b)(6)

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<sup>21</sup> This is around the same time Plaintiff Griffith’s counsel contacted Outcome. However, Ms. Markovich made contact with Outcome independently and Plaintiff Griffith’s counsel only learned of her existence and request in discovery.

<sup>22</sup> Exhibit F.

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

witnesses testified that these requests were not considered in deciding whether to shut down the program.<sup>25</sup>

Furthermore, despite these complaints, Outcome did not even undertake so much as a manual auditing or review process for incoming text messages to confirm that opt-out requests were being honored.<sup>26</sup> Had Outcome had a policy of manually reviewing even *some* of the incoming text messages individuals sent in response to the CMH Tips text messages, it would have found that many individuals were repeatedly texting “stop” or “stop CMH tips” to Outcome to no avail, well before March of 2016. *See also*, Section II(d), *infra*.

Outcome’s failures all contributed to any “technical glitch” it now claims to have caused the TCPA violations at issue. Outcome rushed development of its HealthBlaster application, and failed to fix the glitch, shut down the program, or implement any sort of auditing process despite being put on notice. Outcome is a perfect example of how companies would seek to abuse any proposed exemption to cover up their own negligence.

**c. Outcome is Currently Being Sued for Fraud and Investigated by the Department of Justice for Fraud, and its Text Message Program May Have Been Part of that Fraud.**

Outcome Health has been front page news of the Wall Street Journal and multiple other outlets for defrauding its advertising partners and investors by, among other things, manipulating the numbers it provided to its advertising partners.<sup>27</sup> This includes, for example, providing doctored screenshots of an ad running on an Outcome computer, editing it to add a timestamp and doctor identification number, and sending it to an advertiser which had requested that Outcome provide a screenshot showing their ad had run in doctor’s offices. This also includes inflating

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<sup>25</sup> Exhibit G (Deposition of Brad Purdy, 66:10-67:2).

<sup>26</sup> Exhibit C (Pathervellai Depo. 102:5-23); Exhibit H (Deposition of Jonathan Pauli, 34:11-19, 172:11-15)

<sup>27</sup> Exhibit I.

survey numbers when advertisers had asked Outcome to survey patients and doctors to see how they responded to ads. And in a situation where early data for ads running on tablets for one of Outcome's advertising clients did not match what Outcome had shared with the partner, Outcome internally discussed the "poor engagement" and agreed to keep the numbers inflated.

Just last week, Outcome's investors – who had invested \$484m in the company in May 2017 – sued Outcome for fraud.<sup>28</sup> These investors allege that Outcome manipulated case studies, provided misleading financial statements, and made other false representations, largely in reliance and expansion on the WSJ article.

The Department of Justice, U.S. Attorneys, and the Securities and Exchange Commission are also investigating Outcome's fraud.<sup>29</sup>

I have suspected since prior to the WSJ article that Outcome may have been lax with its opt-out process (choosing to "mark as unsubscribed" rather than delete an entry) to inflate engagement numbers. After all, what better way to exemplify engagement with Outcome's advertising methods than by using subscriber numbers for a text messaging program advertised through those methods? When I pressed Outcome's 30(b)(6) witness on whether Outcome ever used the number of subscribers as part of its sales pitches, the witness repeatedly responded "I don't know".<sup>30</sup> However, emails produced show that one of Outcome's sales representatives had specifically asked for "numbers we have subscribed and what the signup and opt out numbers look like (is it growing and at what rate)" because "knowing how many people sign up for the daily texts shows actual numbers behind patient engagement."<sup>31</sup>

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<sup>28</sup> Exhibit J.

<sup>29</sup> Exhibit K.

<sup>30</sup> Exhibit G (Purdy Depo., 89:24-90:12).

<sup>31</sup> Exhibit L.

Further, Matt Garms – the Outcome employee who had first received and forwarded the “opt out” inquiries from Mr. Inman and Ms. Markovich – and several sales associates who reported to him have previously been implicated in making deceptive statements in the marketing of Outcome’s products.<sup>32</sup>

Given that Outcome was apparently engaged in fraud related to all aspects of its advertising platforms, I believe that Outcome was manipulating the Healthy Tips numbers as well. This would also explain why *any* text other than certain key words would add a number to a database – such an aggressive approach inflates the number of telephone numbers in the database for use in sales.

As the Wall Street Journal article came to light after discovery closed in this matter, I anticipate asking the court to re-open discovery into the relationship of Outcome’s fraud and the Healthy Tips program at issue.

**d. A Simple, cursory Audit Process Would Have Discovered This “Glitch.”**

Setting aside everything discussed above – Outcome’s negligence, its notice, and its fraud – Outcome’s petition would still not justify an exemption. Above all else, if Outcome did not know about the “glitch”, it is only because it chose not to monitor or audit its text messaging program.<sup>33</sup> This is not a case where a haywire piece of equipment malfunctioned and sent 1,000 gibberish texts in an hour to one recipient. This was a “one text per person, per day” process. Some of these persons, like Plaintiff Griffith, sought to stop the texts on dozens of occasions, including not just saying “stop”, but literally writing, on February 16, 2016, “[f]or the record, I am opting out every time I reply stop.”

Had Outcome spent an hour a week – even an hour a month – reviewing its incoming text

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<sup>32</sup> Exhibit M.

<sup>33</sup> Exhibit C (Pathervellai Depo. 102:5-23); Exhibit H (Deposition of Jonathan Pauli, 34:11-19, 172:11-15)

logs, during any of the 10 months of the proposed class period, it would have immediately seen that something was amiss, and could have rectified the problem. But it did not. It rushed its program out the door, half-finished, and moved on without looking back, leaving consumers like Ms. Griffith with no recourse to terminate Outcome's unstoppable text messages.

**e. This Case Is Not About Opt-Out Confirmation Texts.**

Outcome attempts to link its Petition to the Commission's previous declaratory ruling in *SoundBite*,<sup>34</sup> but *SoundBite* is irrelevant to Outcome's request. *Soundbite* dealt with a company sending a single opt-out confirmation message to a consumer who made a request to unsubscribe. The Commission considered such messages to be desirable and included within a consumer's original consent. Such messages are expressly carved out from Plaintiff Griffith's claims. Petitioner's attempt to link its request to the *SoundBite* decision is a sympathy play, but nothing in *SoundBite* supports exempting a company from the results of its own negligence in sending indisputably unwanted text messages.

**IV. Outcome's Conduct Shows Why Its Proposed Exemption is Unworkable.**

As explained above, Outcome's own negligent conduct directly contributed to the supposed glitch. It is impossible to determine where Outcome's negligence ended and the glitch began, because the two are related. But this is not just an Outcome problem – it would be a problem in any case in which the defendant alleged that the unwanted calls or texts were the result of a technical glitch.

If a company uses an intern to create an in-house program in a coding language he or she had only recently learned, does a failure of that program constitute a technical glitch deserving of

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<sup>34</sup> *SoundBite Communications, Inc. Petition for Expedited Declaratory Ruling*, Declaratory Ruling, 27 FCC Rcd 15391 (2012) ("*SoundBite*").

exemption? If a company rushes a half-finished program out the door without testing, does a failure of that program constitute a technical glitch deserving of exemption? If a company purchases or leases auto-dialing equipment from a company, but does not undertake independent analysis or testing (nor ask for such analysis or testing), does a failure of that program constitute a technical glitch deserving of exemption? If a company does not implement any manual review or auditing process to ensure that any automated text process is working as intended, and the program is not working as intended, is that a technical glitch deserving of exemption?

The questions and possibilities are endless. For just about every “technical glitch” imaginable in the autodialer context, there are, at some point along the way, human failures or negligence that contributed to that glitch to varying degrees. It seems impossible to craft an exemption for “technical glitches” that would not either be (1) overly broad, absolving companies from their own negligence and leaving consumers to suffer, or (2) so narrow as to be pointless.<sup>35</sup>

Further, being forced to litigate this exemption – which would invariably appear as a defense in every autodialer case, no matter the true cause of the unwanted messages – would significantly increase costs to both parties, third-parties, and the court. Deposition costs would skyrocket, as parties would be forced to depose the creator of a particular autodialer and anyone else who may have made modifications to that autodialer, and would be forced to inquire into aspects not typically necessary in a TCPA case – for example, mental state, fatigue, impairment, and/or skill level at the time the dialer was created. Expert costs would increase, as a fight about whether equipment qualifies as an autodialer would also become one about the root cause of a call or text. Motion practice would increase in quantity, as increased discovery would lead to more

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<sup>35</sup> It is also difficult to think of an exemption that would not merge 227(b)’s strict liability provision with its “willful” or “knowing” provision.

discovery fights, motions, and complexity, as the parties fight over whether the system “glitched” and what caused the “glitch.” All of this would increase costs and the burden on our courts.

On the flip side, such an exemption would do little to reduce the amount of litigation under the TCPA. Any “technical glitch” defense would be intensely factual, leaving it for resolution after discovery rather than at the pleadings stage. Suits will still be filed. As a result, the end-game liability calculus for businesses facing such suits would not materially change, but the costs in reaching that end game would increase for all involved.

## **V. Conclusion**

Outcome is the perfect example of why its proposed exemption is unworkable and is a bad idea for consumers, our court system, and businesses. For these reasons, as detailed further herein, I, on behalf of consumer-Plaintiff Christy Griffith, respectfully request that the Commission reject Outcome’s petition.

Date: November 27, 2017

/s/ Jeremy M. Glapion  
Jeremy M. Glapion  
**THE GLAPION LAW FIRM, LLC**  
1704 Maxwell Drive  
Wall, New Jersey 07719  
Tel: 732.455.9737  
Fax: 732.709.5150  
[jmg@glapionlaw.com](mailto:jmg@glapionlaw.com)

# EXHIBIT A



**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS**

**CHRISTY GRIFFITH**, individually and on  
behalf of all others similarly situated,

Plaintiff,

v.

**CONTEXTMEDIA HEALTH, LLC d/b/a  
OUTCOME HEALTH**

Defendant.

Civil Case No.: 16-2900

**SECOND AMENDED CLASS ACTION  
COMPLAINT AND JURY DEMAND**

**INTRODUCTION**

1. Plaintiff Christy Griffith (“Plaintiff”) brings this Class Action Complaint for damages, injunctive relief, and any other available legal or equitable remedies, resulting from Defendant ContextMedia Health, LLC’s (“ContextMedia” or “Defendant”) practice of sending autodialed text messages to cellular telephones without consent, in violation of the Telephone Consumer Protection Act, 47 U.S.C. § 227 *et seq.*, (“TCPA”).

2. The TCPA is a codification of a type of invasion of privacy. As Congress wrote in the Congressional findings in the TCPA, “[e]vidence compiled by the Congress indicates that ... telephone subscribers consider automated or prerecorded telephone calls, regardless of the content or the initiator of the message, to be a nuisance and an invasion of privacy.” 47 U.S.C. 227, Congressional Findings ¶ 10.

3. In or about July 2015, Plaintiff subscribed to Defendant’s “CMH Nutrition Tips” service, through which Defendant would send to Plaintiff’s cellular telephone an automated text message containing a nutrition tip each day.

4. On or before November 29, 2015, Plaintiff replied “STOP” to one of these text messages, which was the method stated in text message for opting out of further text messages.

5. Since that date, and despite no less than 25 attempts to opt out of the text messages using “STOP”, variations on the word “STOP,” and some particularly clever “STOP” puns, the text messages have continued on a near-daily basis.

6. While Plaintiff had initially consented to receipt of these messages, she subsequently revoked her consent using the method Defendant provided to opt out.

7. Under the TCPA, consumers are permitted to revoke prior express consent to receive text messages. *See, e.g. SoundBite Communications, Inc.*, 27 FCC Rcd. 15391 (Nov. 26, 2012) (confirming that an entity may only send an opt-out confirmation text after the consumer has revoked his or her consent to receive further text messages); *Gonnella v. Delbert Servs. Corp.*, Case No. 14-cv-4921, 2015 U.S. Dist. LEXIS 34465, \*9-11 (N.D. Ill. Mar. 19, 2015).

8. Accordingly, Defendant’s post-“stop” text messages were sent without prior express consent, and thus violated the TCPA.

9. Upon information and belief, Defendant has made and continues to send similar text messages to cellular telephones nationwide after the recipients have replied “STOP” to one of Defendant’s messages.

### **JURISDICTION AND VENUE**

10. This Court has subject matter jurisdiction under 28 U.S.C. § 1331, as this action arises under the TCPA, which is a federal statute. This Court has personal jurisdiction over Defendant because it resides in this district.

11. Venue is proper in this District under 28 U.S.C. § 1391(b) because Defendant conducts significant amounts of business transactions within this District and because the wrongful conduct giving rise to this case occurred in, was directed to, and/or emanated from this District. Venue is also proper because Defendant resides in this district.

### **PARTIES**

12. Plaintiff is, and at all times mentioned herein was, a citizen and resident of the State of North Carolina.

13. Plaintiff is, and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153 (10).

14. Defendant ContextMedia Health, LLC is and at all times mentioned herein was, a corporation duly organized under the laws of the State of Illinois with its headquarters in Chicago, Illinois.

15. Defendant ContextMedia Health, LLC is and at all times mentioned herein was, a “person” as defined by 47 U.S.C. § 153(10).

16. Does 1-25 are fictitious names of individuals and businesses alleged for the purpose of substituting names of Defendants whose identities will be disclosed in discovery and should be made parties to this action.

### **FACTUAL ALLEGATIONS**

17. In approximately July 2015, Plaintiff, upon prompting from a program playing in the waiting room of a doctor’s office, opted in to receiving autodialed text messages containing nutrition tips from Defendant’s SMS “Short Code”<sup>1</sup> number 50101 to her cellular telephone number 919-###-9578.

18. At the time, Defendant used short code 50101 in conjunction with its brand “Diabetes Health Network.”

19. Immediately after opting in, Plaintiff began receiving text messages from

---

<sup>1</sup> A “short code” is essentially a shortened telephone number, primarily used for sending and receiving SMS and MMS messages. Short codes are often, if not exclusively, used with automated messaging.

Defendant's Short Code number 50101 in the following form:

CMH TIPS: Eat a healthy breakfast, and smaller meals throughout the day. This will help keep your energy up and your metabolism going.

\* \* \*

CMH TIPS: Plate your food! When you portion food onto a plate & put the bag away before eating, it is much easier not to overeat.

20. None of the text messages from 50101 contained any instructions on how to stop the texts.

21. At some point in or about August 2015, the text messages from 50101 ceased, but Plaintiff immediately began receiving text messages identical in form and substantially similar in content from SMS Short Code 21831.

22. These text messages included, for example:

CMH TIPS: Did you know that mushrooms are the only source of vitamin D in the produce aisle?

\* \* \*

CMH TIPS: Is it hunger? If you are craving a chocolate bar and a healthier snack does not appeal, you are probably not truly hungry.

23. While most of these initial text messages did not contain any instructions on how to opt out, eventually the content of the message changed slightly to the following form:

CMH TIPS: If you live in a cold climate, still exercise! Walk around the mall or workout in your living room to get your heart pumping. To opt-out, reply STOP

\* \* \*

CMH TIPS: Try swapping potatoes for cauliflower for a low-carb meal. Mash them, broil them, or make a cauliflower "potato" salad. To opt-out, reply STOP

24. No longer wishing to receive these texts, Plaintiff replied "STOP" on multiple

occasions, but the texts did not stop.

25. For example, in 2015, on November 29, December 23, December 24, December 27, December 28, December 29, among other dates, Plaintiff replied “STOP” in response to Defendant’s messages, but the messages continued.

26. In 2016, Plaintiff replied “STOP” on January 1, January 2, January 3, January 5, January 23 (five times), February 4, and February 5.

27. In an attempt to keep in good humor over these texts, Plaintiff also texted responses such as “If you don’t STOP, the terrorists win” (January 13), and, in response to a text beginning “CMH TIPS: Love Lattes?”, Plaintiff wrote “I’d love it a latte if you’d STOP.”

28. On February 16, Plaintiff wrote: “For the record, I am opting out every time I reply stop.”

29. There are multiple other instances as well, including some demonstrating Plaintiff’s growing annoyance and frustration with these messages, such as “STOP STOP STOP FOR THE LOVE OF GOD STOP” (January 10).

30. Defendant did not respond to any of these opt-out requests, except to send more of the very texts Plaintiff attempted to stop.

31. Plaintiff estimates that she received at least 80 text messages from Defendant after the first time she asked Defendant to “STOP.”

32. These text messages were all sent using an “automatic telephone dialing system” as defined at 47 U.S.C. § 227(a)(1) and as explained in subsequent FCC regulations and orders.

33. That the text messages were sent using an automatic telephone dialing system is evidenced by, *inter alia*:

- a) The frequency, persistence, and regularity of the messages;

- b) The near-identical form and substantially similar content of the messages;
- c) The fact that the messages came from a “short code,” which, upon information and belief, cannot be assigned to a standard telephone;
- d) The traditional and near-exclusive use of “short codes” to send automated messages;
- e) The lack of any response (other than continued “CMH TIPS” messages) in response to Plaintiff’s “STOP” requests;
- f) The lack of any human response to Plaintiff’s “STOP” requests;
- g) The purportedly automated “opt out” process meant to be triggered by the word “STOP”;
- h) The opt-in process, which began the text messages automatically in response to a consumer’s request.

34. Text messages are considered “calls” under the TCPA. *See, e.g.* 2003 FCC Order, 18 FCC Rcd. 14014, ¶ 165; *Lozano v. Twentieth Century Fox Film Corp.*, 702 F. Supp. 2d 999, 1003 (N.D. Ill. 2010).

35. While Defendant initially had consent to send the “CMH TIPS” text messages to Plaintiff’s cellular telephone, Plaintiff revoked this consent on numerous occasions.

36. It has long been held that a consumer can revoke his or her consent to receive text messages – especially if the opt-out is done in writing such as through a responsive text message. *See, e.g. SoundBite Communications, Inc.*, 27 FCC Rcd. 15391 (Nov. 26, 2012) (confirming that an entity may only send an opt-out confirmation text after the consumer has revoked his or her consent to receive further text messages); *Gonnella v. Delbert Servs. Corp.*, Case No. 14-cv-4921, 2015 U.S. Dist. LEXIS 34465, \*9-11 (N.D. Ill. Mar. 19, 2015).

37. Accordingly, as of no later than November 29, 2015, Defendant did not have consent to send automated text messages to Plaintiff's cellular telephone.

38. Nonetheless, Defendant continued to send automated text messages to Plaintiff's cellular telephone.

39. The text messages were not sent for "emergency purposes" as defined by 47 U.S.C. § 227(b)(1)(A)(i).

40. Accordingly, Defendant ContextMedia's text messages to Plaintiff after Plaintiff sent a "STOP" text message violated the TCPA.

41. Plaintiff has suffered injury-in-fact as a result of Defendant's telephone calls, including, but not limited to:

- a) Device storage. Text messages necessarily take up storage space on cellular telephones and because Defendant's text messages did so without prior express consent, they constitute concrete injury;
- b) Lost time reading, tending to and responding to the unsolicited texts, and deleting the unwanted texts. The time spent reading, addressing, and deleting unsolicited text messages is concrete injury;
- c) Invasion of Privacy. Defendant's continued contact after asking Defendant to stop contact is both a nuisance and an invasion of Plaintiff's privacy, and constitutes concrete injury. This can be seen, for example, in Plaintiff's frustrated January 10, 2016 text message.

42. These injuries are both particularized (in that they each affect plaintiff in a personal and individual way) and concrete (in that the above harm actually exists).

43. Upon information and belief, Defendant ContextMedia has sent similar messages

to individuals' cellular telephones nationwide after receiving a "STOP" request.

44. Plaintiff and the Class members are entitled to at least \$500 per text message after sending a "STOP" message.

45. Plaintiff and the Class members are entitled to \$1,500 per text message after sending a "STOP" message if Defendant's behavior was willful or knowing.

### **CLASS ACTION ALLEGATIONS**

46. Plaintiff brings this action under Fed. R. Civ. P. 23 on behalf of a proposed class defined as:

Plaintiff and all persons within the United States to whose cellular telephone number Defendant ContextMedia Health, LLC sent, in the past four years, a text message, other than an opt-out confirmation text message, using an automatic telephone dialing system, after Defendant's records, or the records of any entity with whom Defendant contracted to provide text messaging services, indicate Defendant or that entity received a text message containing the word "STOP" from that cellular telephone number.

("Class")

47. Excluded from this class are Defendant and any entities in which Defendant has a controlling interest; Defendant's agents and employees; any Judge and Magistrate Judge to whom this action is assigned and any member of their staffs and immediate families, and any claims for personal injury, wrongful death, and/or emotional distress.

48. The Class members for whose benefit this action are brought are so numerous that joinder of all members is impracticable.

49. The exact number and identities of the persons who fit within the class are ascertainable in that Defendant ContextMedia maintains written and electronically stored data showing:

a. The time period(s) during which Defendant ContextMedia sent its text



messages;

b. The telephone numbers to which Defendant ContextMedia sent its text messages;

c. The telephone numbers which sent a “STOP” text message to Defendant;

d. The telephone numbers to which a text message was sent after Defendant received a “STOP” text message from that telephone number. sending a “STOP” text message.

50. The Class is comprised of hundreds, if not thousands, of individuals nationwide.

51. There are common questions of law and fact affecting the rights of the Class members, including, *inter alia*, the following:

a. Whether Defendant ContextMedia used an automatic dialing system in placing its calls;

b. Whether Defendant ContextMedia took adequate steps to acquire and/or track consent;

c. Whether and to what extent Defendant ContextMedia honored “STOP” requests from text message recipients;

d. Whether Plaintiff and the Class were damaged thereby, and the extent of damages for such violations; and

e. Whether Defendant should be enjoined from engaging in such conduct in the future.

52. Plaintiff is a member of the Class in that she received text messages from Defendant ContextMedia after she sent the text “STOP.”

53. The claims of Plaintiff are typical of the Class members in that they arise from

Defendant's uniform conduct and are based on the same legal theories of all Class members.

54. Plaintiff and all putative Class members have also necessarily suffered concrete injury, as, by virtue of the class definition being restricted to those who received text messages after asking Defendant to "stop", all Class members spent time tending to Defendant's unwanted text messages, lost storage space as a result of Defendant's text messages, and suffered both a nuisance and invasion of privacy.

55. Plaintiff has no interests antagonistic to, or in conflict with, the Class.

56. Plaintiff will thoroughly and adequately protect the interests of the Class, having retained qualified and competent legal counsel to represent himself and the Class.

57. Defendant has acted and refused to act on grounds generally applicable to the Class, thereby making injunctive and declaratory relief appropriate for the Class as a whole.

58. The prosecution of separate actions by individual class members would create a risk of inconsistent or varying adjudications.

59. A class action is superior to other available methods for the fair and efficient adjudication of the controversy since, *inter alia*, the damages suffered by each class member make individual actions uneconomical.

60. Common questions will predominate, and there will be no unusual manageability issues.

**FIRST CAUSE OF ACTION**  
**Violation of 47 U.S.C. § 227**  
(On Behalf of Plaintiff and the Class)

61. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

62. Defendant ContextMedia sent text messages to the cellular telephone numbers belonging to Plaintiff and the other members of the Class.

63. These text messages were sent after Plaintiff and Class members sought to opt out of further text messages by sending a “STOP” text message.

64. These text messages were all sent using equipment that had the capacity to store telephone numbers to be called or messaged, using a random or sequential number generator, and/or without human intervention.

65. The post-STOP text messages were all sent without the prior express consent of Plaintiff and the other members of the putative Class.

66. Defendant ContextMedia has therefore violated 47 U.S.C. § 227(b)(1)(A)(iii).

67. As a result of Defendant’s unlawful conduct, Plaintiff and the members of the putative Class suffered actual damages and, under 47 U.S.C. § 227(b)(3)(B), are each entitled to, *inter alia*, a minimum of \$500 in damages for each such violation.

68. Should the Court determine that Defendant’s conduct was willful and/or knowing, Plaintiff and each member of the class are entitled to treble damages in the amount of \$1,500 per call, pursuant to 47 U.S.C. § 227(b)(3).

### **PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff Christy Griffith, individually and on behalf of the Class, prays for the following relief:

A. An order certifying the Class as defined above, appointing Plaintiff Christy Griffith as the representative of the Class, and appointing her counsel as Class Counsel;

B. An order declaring that Defendant’s actions, as set out above, violate 47 U.S.C. § 227;

C. An award of injunctive and other equitable relief as necessary to protect the interests of the Class, including, *inter alia*, an order prohibiting Defendant from engaging in the

wrongful and unlawful acts described herein;

- D. An award of actual and statutory damages;
- E. An award of reasonable attorneys' fees and costs; and
- F. Such other and further relief that the Court deems reasonable and just.

### **JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

**Dated:** July 17, 2017

/s/ Jeremy M. Glapion  
Jeremy M. Glapion  
**THE GLAPION LAW FIRM, LLC**  
1704 Maxwell Drive  
Wall, New Jersey 07719  
Tel: 732.455.9737  
Fax: 732.709.5150  
[jmg@glapionlaw.com](mailto:jmg@glapionlaw.com)

# **EXHIBIT B**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

CHRISTY GRIFFITH, individually )  
and on behalf of all others )  
similarly situated, )  
 ) Civil Case No.  
Plaintiff, ) 16-2900  
 )  
vs. )  
 )  
CONTEXTMEDIA, INC., and DOES )  
1-25, )  
 )  
Defendant. )

Deposition of CHRISTINA L. GRIFFITH  
Chicago, Illinois  
Tuesday, April 18, 2017

Reported by:  
Sandra L. Rocca, CSR, RMR, CRR  
Job No. 122613

1 C. GRIFFITH

2 Q. What do you mean by "your space"?

3 A. My personal space, my property.

4 Q. Before you spoke with Mr. Glapion, did you think  
5 these text messages constituted a trespass to your phone?

6 MR. GLAPION: Objection, calls for legal  
7 conclusion.

8 THE WITNESS: I do feel like that they were coming  
9 into my personal space unwanted.

10 Q. So before you talked with Mr. Glapion, you  
11 considered these text messages to be a trespass?

12 MR. GLAPION: Objection, asked and answered.

13 THE WITNESS: Yes.

14 Q. Before you talked to Mr. Glapion, did you view  
15 these text messages as an invasion of your privacy?

16 A. Yes.

17 Q. And why?

18 A. Because I repeatedly opted out with their  
19 instructions and they disregarded my instructions and kept  
20 texting me.

21 Q. And you view that as an invasion of your privacy?

22 A. I do.

23 Q. Anything else that makes you regard it as an  
24 invasion of your privacy?

25 A. Yes. I was very frustrated that by ignoring my

1 C. GRIFFITH

2 requests for them to stop, I would get these text messages at  
3 home, at work. I'd get them volunteering at my kids' school.  
4 I would get them while I was in the hospital with my daughter  
5 and her oncologist. I would get them while I was driving. I  
6 would get them on vacation. I told them to stop and they  
7 wouldn't.

8 Q. Do you think that every person who received a text  
9 message after texting "STOP" would also find them to be the  
10 same invasion of privacy that you just described?

11 A. I would imagine they would.

12 Q. Why?

13 A. For the reason that I just said.

14 Q. How much time did you spend reading each of the  
15 texts?

16 A. I'd imagine five to ten seconds.

17 Q. And then how long did it take you to reply "STOP"?

18 A. When I was just replying "STOP" it would only take  
19 a few moments. When I got more creative, it got a little bit  
20 longer.

21 Q. Approximately how long would the more creative ones  
22 take?

23 A. About 30 seconds to think of how I wanted to reply  
24 "STOP" that day.

25 Q. Now, you didn't delete any of the texts, correct?



# **EXHIBIT C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

CHRISTY GRIFFITH,	)	
individually and on behalf	)	
of all others similarly	)	
situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 16-2900
	)	
CONTEXTMEDIA, INC., and	)	District Judge: Hon.
DOES 1-25,	)	Elaine S. Bucklo
	)	
Defendant.	)	Magistrate Judge:
	)	Hon. Mary M. Rowland

The deposition of 30(b)(6) DHAMODHARAN "DHAM" PATHERVELLAI, called by Plaintiff, for examination, pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions taken before Stephanie A. Battaglia, CSR and Notary Public in and for the County of DuPage and State of Illinois, at 200 South Wacker Drive, Suite 2900, Chicago, Illinois, on July 13, 2017, 8:05 a.m.

1           **A.     I don't recall exact date.**

2           Q.     Do you have an approximate timeframe for  
3     that?

4           **A.     No.   It should be part of the**  
5     **documentation, if you show me I should be able to help**  
6     **you with that.**

7           Q.     So you said that there was a subscriber  
8     list imported from the old application to the new  
9     application, is that correct?

10          **A.     Yes.**

11          Q.     And how was that imported?

12          **A.     Through a text file.   You can export a**  
13     **file from the previous database and import into the**  
14     **new database.**

15          Q.     How would that text file -- what would  
16     that text file contain?

17          **A.     All the subscriber information including**  
18     **phone numbers.**

19          Q.     And how would that text file then make  
20     its way into the database?

21                   MR. DARMSTADTER:   Object to form.

22     BY MR. GLAPION:

23          Q.     Would that text file -- would the phone  
24     numbers contained in that database, excuse me, the

1 phone numbers contained in that text file, they were  
2 imported into the database?

3 **A. Yes.**

4 Q. And what is the method by which they were  
5 imported into the database?

6 **A. Using a database command.**

7 Q. Do you remember what the database command  
8 was or the type of command it was?

9 **A. I don't know. It is because it is I am**  
10 **not the person who did it. It is you should be able**  
11 **to go back and talk to the persons, basically the**  
12 **technical people who did it.**

13 MR. GLAPION: Seth, I am not getting into  
14 code, don't worry. I figure that might be where you  
15 are going with that.

16 BY MR. GLAPION:

17 Q. So this -- these telephone numbers were  
18 imported from the text file in a bulk manner, would  
19 you say?

20 **A. Yes.**

21 Q. Do you remember how many telephone  
22 numbers were imported?

23 **A. I don't know.**

24 Q. And then that same sentence we were

1     **can read that where Brian put it in.**

2             Q.     I do want to discuss that list, the text  
3     file we discussed earlier.

4                     How would the phone numbers get into that  
5     text file?

6             **A.     Somebody has to manually enter it.**

7             Q.     So someone would manually enter the phone  
8     numbers from the Signal HQ subscribers into that text  
9     file?

10                    MR. DARMSTADTER:  Object to form, calls  
11     for speculation.

12     BY MR. GLAPION:

13             Q.     I think you --

14             **A.     I am confused.**

15             Q.     I am going back to what we discussed  
16     earlier about how numbers were imported from Signal  
17     HQ's application into when you switched over to Twilio  
18     and HealthBlaster, do you remember that testimony?

19             **A.     Yes.**

20             Q.     And you mentioned that there was a text  
21     file that would contain phone numbers, correct?

22             **A.     Uh-huh.**

23             Q.     And what I am asking is how those phone  
24     numbers would be added to the text file.

1 question.

2 THE WITNESS: To do what, to confirm and  
3 make them subscribe?

4 BY MR. GLAPION:

5 Q. Was there any review process by which  
6 these incoming subscribe messages, the content of  
7 these incoming subscribe messages, would be reviewed  
8 by a person?

9 MR. DARMSTADTER: Object to the form of  
10 the question.

11 THE WITNESS: I don't know.

12 BY MR. GLAPION:

13 Q. What about at Outcome Health, do you know  
14 whether these text messages would be reviewed by a  
15 person at Outcome Health?

16 A. I do not know about that process, what is  
17 followed to review, if there was any.

18 Q. Do you have any knowledge of it  
19 happening?

20 MR. DARMSTADTER: Object to form, asked  
21 and answered.

22 THE WITNESS: I don't have any knowledge  
23 of that.

24

# **EXHIBIT D**

**From:** Ernesto Rodriguez [ernesto.r@contextmediainc.com]  
**Sent:** Tuesday, August 04, 2015 5:16 PM  
**To:** Jon Pauli  
**CC:** Ryan Postel; Work; Arielle Angel; Lee Ebreo; Mike Williams  
**Subject:** Re: Signal Replacement Early Adopters...

Yes JP, go live with it and we'll have Marshall work with the remaining requirements after I review it over with him tomorrow.

-Beats

On Tuesday, August 4, 2015, Jon Pauli <[jon.pauli@contextmediainc.com](mailto:jon.pauli@contextmediainc.com)> wrote:

Do you want me to go live with what we have in production? It seems to be working fine, I just need to import about 9,000 people and they'll get their message tomorrow.

On Tue, Aug 4, 2015 at 12:12 PM, Ryan Postel <[ryan.postel@contextmediainc.com](mailto:ryan.postel@contextmediainc.com)> wrote:

Hey guys,

Just a heads up that we needed to be live on this as of Friday. All requirements for first iteration should be 100% completed. Our Signal contract is done and this is our only service for our 11k subscribers. Has the entire list been converted over? Has there been a newly developed process for manual messaging made? I would like an update ASAP today on the requirements I laid out last week.

Thank you,  
Ryan

Sent from my iPhone

On Aug 4, 2015, at 11:52 AM, Work <[marshall.shen@contextmediainc.com](mailto:marshall.shen@contextmediainc.com)> wrote:

Sure thing! Tomorrow sounds good.

—  
Sent from [Mailbox](#)

On Tue, Aug 4, 2015 at 8:49 AM, Ernesto Rodriguez <[ernesto.r@contextmediainc.com](mailto:ernesto.r@contextmediainc.com)> wrote:

+Marshall (the new Rails dev and our new HealthBlaster dev)

Hey JP,

- How far did you get into these newer requirements (what would be left to do once you leave)?
- Is today your last day, or tomorrow?

-Beats

On Thu, Jul 30, 2015 at 12:17 PM, Ryan Postel <[ryan.postel@contextmediainc.com](mailto:ryan.postel@contextmediainc.com)> wrote:  
Got it, definitely makes sense.



Other project requirements before we can go live include:

- Welcome message for new subs - do we have it built in? Our current one reads: *We have received your request to add your mobile number to receive daily CMH nutrition tips. Reply Y to confirm your subscription. Msg&data rates may apply*

- Follow up opt-in confirmation: *Thanks for signing up for CMH TIPS. To unsubscribe, reply STOP CMH TIPS. Up to 10 msgs per week, Msg&data rates may apply*

- Weekly Opt out message: *You are currently subscribed to receive alerts from CMH TIPS. To opt-out, reply STOP CMH TIPS.*

-Opt-out confirmation: *You are now unsubscribed from CMH TIPS, sorry to see you go. To provide us feedback, reply "C" if cost prohibitive, "V" if content not valuable. Thank you*

On Thu, Jul 30, 2015 at 11:58 AM, Jon Pauli

<jon.pauli@contextmediainc.com> wrote:

Dynamically scheduled background jobs are kind of a problem for rails apps using our current system, so for now you have to ask myself or Brian if you want to reschedule the jobs. I've been experimenting with a pre-built solution to schedule jobs at run time, but it sucks.

For now I'll focus on the reporting features and get back to you on the other stuff.

On Thu, Jul 30, 2015 at 11:47 AM, Ryan Postel

<ryan.postel@contextmediainc.com> wrote:

Let's select Thursday for our Opt-out time.

Also, our standard SMS send time is 10:30am CST for the daily tip. Where do I control this function?

Thank you JP!

On Thu, Jul 30, 2015 at 11:14 AM, Jon Pauli

<jon.pauli@contextmediainc.com> wrote:

Sure I can get started on these features. These could take a couple of days to get into production.

What date time would you like the weekly opt-out reminder and what would you like the text to be?

On Thu, Jul 30, 2015 at 10:45 AM, Ryan Postel

<ryan.postel@contextmediainc.com> wrote:

Hey JP,

Love the new app! Needs:

Can I get on the dashboard, by day, of Total Successful sends, Total Unsuccessful sends, Total Opt-outs.

Per Brad's requirements, is there a way to schedule a reoccurring weekly text to remind people how to Opt-out?

On Wed, Jul 29, 2015 at 4:23 PM, Ryan Postel

<ryan.postel@contextmediainc.com> wrote:

Hey Mike,

Can we use this attached screenshot as the new foundation for the full-screen one? (yup, welcome to the new decade of cell phones!)

On Wed, Jul 29, 2015 at 4:07 PM, Mike Williams <mike.w@contextmediahealth.com> wrote:

Screen shots of live sidebar and Mainframe.

□

□

□

**Mike Williams**  
Network Engineer

[www.contextmediahealth.com](http://www.contextmediahealth.com)

330 N Wabash, STE 2500

Chicago, IL 60611

O: (312) 646-1182

C: (219) 629-2981

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---

**From:** Ernesto Rodriguez <ernesto.r@contextmediainc.com>

**Sent:** Wednesday, July 29, 2015 03:37 PM

**To:** Jon Pauli <jon.pauli@contextmediainc.com>

**Cc:** Ryan Postel <ryan.postel@contextmediainc.com>; Mike Williams

<mike.w@contextmediahealth.com>; Lee Ebreo

<lee.ebreo@contextmediainc.com>; Arielle Angel

<arielle.a@contextmediahealth.com>

**Subject:** Re: Signal Replacement Early Adopters...

Ok.

Mike said he made the change to the TVs so we should have some natural subscribers slowly coming in.

- JP, Add 100 contacts tomorrow.

-Beats

On Wed, Jul 29, 2015 at 12:28 PM, Jon Pauli <jon.pauli@contextmediainc.com> wrote:

Our first live test to early adopters just finished. It looks like all was successful.

Dashboard is at <https://healthblaster.contextmediahealth.com>

I will send you logins for the dashboard individually.

On Wed, Jul 29, 2015 at 12:13 PM, Ryan Postel

<ryan.postel@contextmediainc.com> wrote:

I would love access to the dashboard. Not sure I have it yet.

Sent from my iPhone

On Jul 29, 2015, at 12:10 PM, Ernesto Rodriguez <ernesto.r@contextmediainc.com> wrote:

Ryan,

Do you have access to the dashboard?

I would assume you would want visibility into that progress bar.

-Beats

On Wed, Jul 29, 2015 at 11:21 AM, Jon Pauli

<jon.pauli@contextmediainc.com> wrote:

Ok so I added a rake task which imports phone numbers from a file. I imported the early adopters (including Ryan), and I changed the time the text is sent to 12:15pm cst so that its relatively friendly to all timezones. The progress bar on the dashboard should tell us the sending status in real time (you do need to refresh the page to update it).

On Wed, Jul 29, 2015 at 8:21 AM, Mike Williams <mike.w@contextmediahealth.com> wrote:  
I can change it today.

---

**From:** Ernesto Rodriguez <ernesto.r@contextmediainc.com>  
**Sent:** Tuesday, July 28, 2015 02:59 PM  
**To:** Lee Ebreo <lee.ebreo@contextmediainc.com>  
**Cc:** Jon Pauli <jon.pauli@contextmediainc.com>; Mike Williams <mike.w@contextmediahealth.com>; Ryan Postel <ryan.postel@contextmediainc.com>; Arielle Angel <arielle.a@contextmediahealth.com>  
**Subject:** Re: Signal Replacement Early Adopters...  
Sounds good Lee.

I just signed up using the new shortcode (21831) and it worked.

- JP, Lets get 50 on today for a new message tomorrow morning
- **Mike, how soon can you add the new shortcode phone number into the code for the waiting rooms?**

-Beats

On Tue, Jul 28, 2015 at 2:47 PM, Lee Ebreo <lee.ebreo@contextmediainc.com> wrote:

I believe Signal is currently down, because they need some compliance paper work from us. So, when transitioning our current subscribers to the new system it shouldn't be a problem in terms of double messaging. In fact, we should just accelerate the plan of transition for current subscribers.

We should just schedule the new short code on WR now.

On Tue, Jul 28, 2015 at 1:53 PM, Ernesto Rodriguez <ernesto.r@contextmediainc.com> wrote:  
Ok JP,

Lets move forward with Early Adopters.

However, if we include 50 current subscribers onto our new system...Can we remove them from the old list?

I want us to move forward with testing this but want to make sure we don't double message our current subscribers (once from each system)

-Beats

On Tue, Jul 28, 2015 at 1:40 PM, Jon Pauli <jon.pauli@contextmediainc.com> wrote:

Our official short code is 21831  
I have just adjusted the production version of the app to start sending from that short code and tested it with myself as the only subscriber.

On Mon, Jul 27, 2015 at 3:22 PM, Ernesto

Rodriguez <ernesto.r@contextmediainc.com>  
wrote:

+Lee

Hey Jon,

Is getting our new official shortcode something we can get soon? I would like to get Mike Williams and Ryan as much time as possible to set this up properly on the media players before we go full network with this.

-Beats

On Mon, Jul 27, 2015 at 11:09 AM, Ernesto Rodriguez <ernesto.r@contextmediainc.com> wrote:

Hey Jon,

When will you have the shortcode?

-Beats

On Fri, Jul 24, 2015 at 1:47 PM, Ernesto Rodriguez <ernesto.r@contextmediainc.com> wrote:

Hey Jon,

How soon will we have our official shortcode?

-Beats

On Fri, Jul 24, 2015 at 1:31 PM, Mike Williams

<mike.w@contextmediahealth.com> wrote:

This is very easy. Change the line of code that has 50101 to whatever the new domain is and we are done. The only catch is the player will need to download the new image. Not a problem if the player is connected but those players with no network connection or unable to reach the sms server will continue to display the last image downloaded. I can make the changes whenever the time is right.

---

**From:** Ryan Postel

<ryan.postel@contextmediainc.com>

**Sent:** Friday, July 24, 2015 12:15 PM

**To:** Ernesto Rodriguez

<ernesto.r@contextmediainc.com>

**Cc:** Jon Pauli

<jon.pauli@contextmediainc.com>; Arielle Angel

<arielle.a@contextmediahealth.com>;

Michael Williams

<mike.w@contextmediahealth.com>

**Subject:** Re: Signal Replacement Early Adopters...

Hey ER and JP,

1. Yes, I can work with Mira to get that done.
2. Random 50, plus my team, should be good
3. I don't... But need to involve Mike Williams asap! (+MW)
  - Mike - We are changing the short code for the SMS program. We will need to plan a swap of that short code across the network.

On Fri, Jul 24, 2015 at 11:28 AM, Ernesto

Rodriguez  
<ernesto.r@contextmediainc.com> wrote:  
Hey Ryan,

JP and I would need this by Monday  
since the rollout has to be completely  
done by EOW next week.

-Beats

On Thu, Jul 23, 2015 at 5:37 PM, Ernesto  
Rodriguez  
<ernesto.r@contextmediainc.com>  
wrote:

Hey Ryan,

It looks like we will plan for a rollout of  
deploying our Signal replacement.

We need the following for us to begin  
planning next steps.

1. Can you use the google doc  
provided and insert the health tips you  
would like to use for the next month?

2. Do you have a specific set of early  
adopter numbers you would prefer us  
to start testing with or randomly  
selecting 50 numbers for early  
adopters is good enough?

3. Do you have a rollout plan in  
regards to updating the media players  
with the new text message shortcode  
to signup with?

-Beats

----- Forwarded message -----

From: **Jon Pauli (via Google Sheets)**

<drive-shares-noreply@google.com>

Date: Thu, Jul 23, 2015 at 4:22 PM

Subject: HealthTips - Invitation to edit

To:

Ernesto.Rodriguez@contextmediainc.com

Jon Pauli has invited you to **edit** the following spreadsheet:

▫ [HealthTips](#)

[Open in Sheets](#)

Google

Sheets:

Create and edit spreadsheets online.

--  
**Ernesto Rodriguez**  
[Scrum Master](#)  
*Software Quality Assurance Specialist*

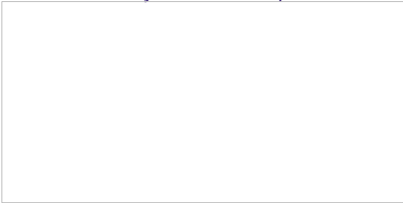


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Chicago, IL 60611

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--  
**Ernesto Rodriguez**  
[Scrum Master](#)  
*Software Quality Assurance Specialist*

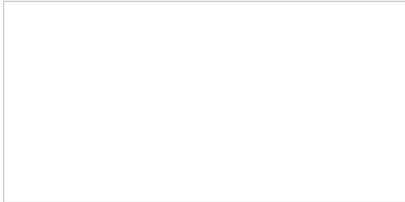


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--



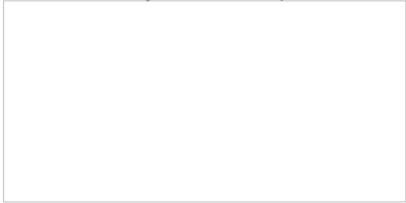
**Ryan Postel** | Media Team Manager  
[www.contextmediahealth.com](http://www.contextmediahealth.com)  
P: [\(312\) 239-6050](tel:(312)239-6050)

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**Ernesto Rodriguez**

[Scrum Master](#)  
Software Quality Assurance Specialist



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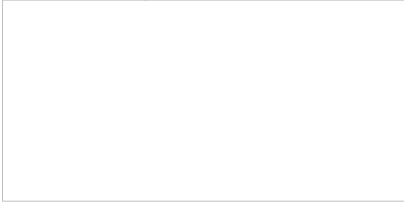
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**Ernesto Rodriguez**

[Scrum Master](#)  
Software Quality Assurance Specialist



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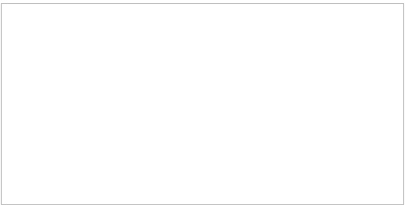
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**Ernesto Rodriguez**

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Software Quality Assurance Specialist



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**Ernesto Rodriguez**

[Scrum Master](#)  
*Software Quality Assurance Specialist*



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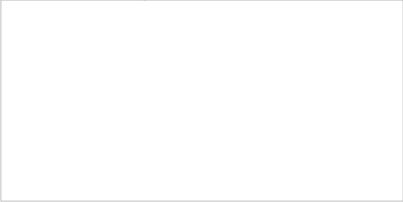
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**Ernesto Rodriguez**

[Scrum Master](#)  
*Software Quality Assurance Specialist*



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--

iPhone iTypos iApologize



# **EXHIBIT E**

## Re: Inquire [#489]

email: "ernesto.r@contextmediainc.com Ernesto Rodriguez"

Monday, October 5, 2015 at 10:55:17 AM Central Daylight Time

To: email: "marshall.shen@contextmediainc.com Marshall Shen"

Cc: email: "matt.garms@contextmediainc.com Matt Garms"

If the user was already unsubscribed then they may not have received the confirmation message that they have been unsubscribed.

Can you find out if that was sent to their subscribing phone number?

It's possible they reached out to us even though another message wasn't coming but they were making sure it was done.

-Beats

On Mon, Oct 5, 2015 at 9:50 AM, Marshall Shen <marshall.shen@contextmediainc.com> wrote:

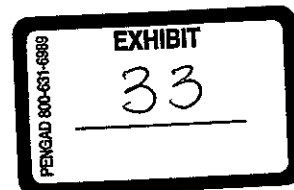
Hi all,

The user was already unsubscribed (texted "stop" and unsubscribed on Aug 14th). Could this be an out-dated ticket?

Please let me know if the user is still complaining about receiving text message.

Thanks.

Sent from Mailbox



On Sat, Oct 3, 2015 at 9:16 AM, Ernesto Rodriguez <ernesto.r@contextmediainc.com> wrote:

Hey Marshall,

Please confirm the following:

1. Did this user ever attempt to unsubscribe? (I'm wondering if the question came because the person was unaware of how to unsubscribe and decided to ask before trying)

2. Find out when this user signed up and was it long enough to receive the weekly reminder of how to unsubscribe.

3. Determine if this user was removed from the list from the fix you applied a few days ago.

-Beats

On Sat, Oct 3, 2015 at 9:02 AM, Matt Garms <matt.garms@contextmediainc.com> wrote:

Marshall --

We have another one...

Sent from my iPhone

Begin forwarded message:

**From:** "Wufoo" <no-reply@wufoo.com>  
**Date:** October 2, 2015 at 9:55:16 PM EDT  
**To:** matt.g@contextmediainc.com  
**Subject:** Inquire [#489]  
**Reply-To:** brinman@sccoast.net

**Your Name \***

Benny Inman

**Email \***

brinman@sccoast.net

**Phone number where we can reach you \***

(843) 283-0704

**Comments**

I want to know to stop your texts to my phone.

**Ernesto Rodriguez**

*Technical Project Manager*

*Software Quality Assurance Specialist*



330 N Wabash Ave, Suite 2500

Chicago, IL 60611

*"Winner of 2015 ICX Excellence Award for Best Healthcare Deployment"*

**Ernesto Rodriguez**

*Technical Project Manager  
Software Quality Assurance Specialist*

**ContextMedia**  
*Health*

**101** BEST  
DESIGN

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Chicago, IL 60611

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---

# **EXHIBIT F**

**From:** Lee Ebreo [lee.ebreo@contextmediainc.com]  
**Sent:** Monday, March 07, 2016 9:11 AM  
**To:** Brian Clarkson  
**CC:** Ernesto Rodriguez  
**Subject:** Fwd: Inquire [#731]

Hey BC, here is another to unsubscribe from CMH Tips.

----- Forwarded message -----

**From:** **Travis Kemp** <[travis.kemp@contextmediahealth.com](mailto:travis.kemp@contextmediahealth.com)>  
**Date:** Mon, Mar 7, 2016 at 8:59 AM  
**Subject:** Fwd: Inquire [#731]  
**To:** Matt Garms <[matt.g@contextmediahealth.com](mailto:matt.g@contextmediahealth.com)>, Ernesto Rodriguez <[ernesto.r@contextmediainc.com](mailto:ernesto.r@contextmediainc.com)>  
**Cc:** Lee Ebreo <[lee.e@contextmediainc.com](mailto:lee.e@contextmediainc.com)>

Ernesto can remove these...

□ **Travis Kemp**

Product Operations Manager  
[www.contextmediahealth.com](http://www.contextmediahealth.com)

330 N. Wabash Ave. STE 2500  
Chicago , IL 60611

O: (312) 646-1276

C: [\(312\) 399-9857](tel:3123999857)

Winner of 2015 [ICX](#) Excellence Award for Best Healthcare Deployment



Please consider the environment before printing this email.

----- Forwarded message -----

**From:** **Matt Garms** <[matt.garms@contextmediainc.com](mailto:matt.garms@contextmediainc.com)>  
**Date:** Sat, Mar 5, 2016 at 6:41 PM  
**Subject:** Fwd: Inquire [#731]  
**To:** Travis Kemp <[travis.kemp@contextmediahealth.com](mailto:travis.kemp@contextmediahealth.com)>

Who can stop these?

Sent from my iPhone

Begin forwarded message:

**From:** "Wufoo" <[no-reply@wufoo.com](mailto:no-reply@wufoo.com)>  
**Date:** March 5, 2016 at 6:26:41 PM CST  
**To:** [matt.g@contextmediainc.com](mailto:matt.g@contextmediainc.com)  
**Subject:** Inquire [#731]  
**Reply-To:** [mjcarm@hotmail.com](mailto:mjcarm@hotmail.com)

**Your Name \***

Carmella Markovich

**Email \***

[mjcarm@hotmail.com](mailto:mjcarm@hotmail.com)

**Phone number where we can reach you \*** [\(412\) 758-8925](tel:(412)758-8925)

**Comments**

I would like to OPT-OUT of CMH TIPS and I have tried several time to opt-out via text message by replying STOP to no avail. These messages are using up to much of my text allowance and I want them to stop. I've tried calling the phone number [1-866-500-6346](tel:1-866-500-6346) and cannot get through. My call is automatically disconnected by an automated attendant.

PLEASE STOP SENDING ME TEXT MESSAGES WITH DIETARY TIPS (21831).

Thank you, Carmella Markovich [\(412-758-8925\)](tel:(412)758-8925)

---

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The information contained in this email is the property of ContextMedia:Health. If you have received this email in error, please notify the sender as soon as possible.

--

Lee Ebreo  
VP of Engineering  
ContextMedia Health

The information contained in this email is the property of ContextMedia:Health. If you have received this email in error, please notify the sender as soon as possible.



# EXHIBIT G

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS

CHRISTY GRIFFITH,	)	
individually and on behalf	)	
of all others similarly	)	
situated,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	No. 16-2900
	)	
CONTEXTMEDIA, INC., and	)	District Judge: Hon.
DOES 1-25,	)	Elaine S. Bucklo
	)	
Defendant.	)	Magistrate Judge:
	)	Hon. Mary M. Rowland

The deposition of 30(b)(6) BRAD PURDY, called by Plaintiff, for examination, pursuant to the Federal Rules of Civil Procedure of the United States District Courts pertaining to the taking of depositions taken before Stephanie A. Battaglia, CSR and Notary Public in and for the County of DuPage and State of Illinois, at 200 South Wacker Drive, Suite 2900, Chicago, Illinois, on July 14, 2017, 8:44 a.m.

1 several time to opt out via text message by replying  
2 stop to no avail. These messages are using up too  
3 much of my text allowance and I want them to stop. I  
4 have tried calling the phone number 1 (866) 500-6346  
5 and cannot get through. My call is automatically  
6 disconnected by an automatic agent. And then in all  
7 caps it says please stop sending me text messages with  
8 dietary tips (21831.) Do you see all that?

9 **A. Yes.**

10 Q. Presumably Ms. Markovich wrote that she  
11 had tried several times to opt out via text message by  
12 replying stop to no avail. Did that raise concerns  
13 with Outcome Health that the unsubscribe process was  
14 not working?

15 **A. This e-mail chain shows that people at**  
16 **Outcome Health acted to remove this individual as soon**  
17 **as they saw this inquiry.**

18 Q. That was not my question.

19 My question was did this form and the  
20 language contained in that form raise concerns with  
21 Outcome Health that the unsubscribe process was not  
22 working?

23 **A. I do not know.**

24 Q. Was this inquiry a basis that Outcome

1 Health used to stop the program?

2 **A. It is not.**

3 Q. It is also -- there is also a reference  
4 to a phone number 1 (866) 500-6346, was that or is  
5 that one of Outcome Health's phone numbers?

6 **A. I do not know. I presume this person is**  
7 **referring to a phone number they believe to be an**  
8 **Outcome Health phone number.**

9 Q. But you don't know whether it actually  
10 was, correct?

11 **A. Correct.**

12 Q. Do the comments in the form field  
13 indicate or suggest that the unsubscribe process may  
14 not have been working?

15 **A. These comments suggest this person was**  
16 **not able to unsubscribe based on their attempts to**  
17 **unsubscribe. It is difficult to know whether or not**  
18 **their attempts would have been such that they should**  
19 **have created an unsubscription.**

20 Q. Why was my inquiry a basis for stopping  
21 the program but not the inquiry of Ms. Markovich?

22 **A. Because it raised concerns that the**  
23 **program was not being run correctly and that there was**  
24 **legal liability.**

1 engaging with that particular content on the waiting  
2 room screen?

3 MR. DARMSTADTER: Asked and answered.

4 THE WITNESS: No.

5 BY MR. GLAPION:

6 Q. It wouldn't indicate that or it would  
7 indicate that?

8 A. If that content was on the screens and  
9 nobody was signing up then it would be my presumption  
10 that people were not using that to then activate under  
11 the program, but it doesn't necessarily mean that they  
12 aren't engaging with it.

13 Q. Are you aware of whether Outcome Health  
14 tracked the total number of subscribers in the  
15 program?

16 MR. DARMSTADTER: Asked and answered.

17 THE WITNESS: I don't know.

18 BY MR. GLAPION:

19 Q. Are you aware of whether Outcome Health  
20 maintained a list of subscribers to the program  
21 anywhere?

22 A. It is my understanding that a database of  
23 subscribers is required for the program.

24 Q. Did Outcome Health ever use the total

1 number of subscribers to the Healthy Tips program as  
2 part of any sales efforts?

3 **A. I don't know.**

4 Q. Is it possible that they did?

5 **A. I don't know.**

6 Q. Were there any instructions by Outcome  
7 Health not to use the number of subscribers in the --  
8 excuse me, number of subscribers in the Healthy Tips  
9 program in any sales effort?

10 MR. DARMSTADTER: Object to the form of  
11 the question, lacks foundation.

12 THE WITNESS: I don't know.

13 BY MR. GLAPION:

14 Q. Is there a sales team at Outcome Health?

15 **A. There are two sales teams.**

16 Q. And what are these two sales teams?

17 **A. There is a sales team that grows the**  
18 **number of physician practices we have and there is a**  
19 **sales team which sells advertising or sponsored**  
20 **content within the hardware technology we have within**  
21 **those practices.**

22 Q. Are the salespersons within those teams  
23 supervised?

24 **A. Yes. They each respectively have**

**GZJ KDK'J ''**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS

---oOo---

CHRISTY GRIFFITH, individually  
and on behalf of all others  
similarly situated,  
Plaintiffs,

vs. Case No. 16-cv-2900  
CONTEXTMEDIA, INC., and DOES  
1 - 25,

Defendants,

-----/

DEPOSITION OF JONATHAN PAULI  
OAKLAND, CALIFORNIA  
MONDAY, JULY 10, 2017

Veritext Legal Solutions  
Mid-Atlantic Region  
1250 Eye Street NW - Suite 350  
Washington, D.C. 20005



1           Q    And then, I guess, is it fair to say then  
2           that the sign-ups were tracked automatically by this  
3           application?

4                   MR. DARMSTADTER:   Object to form and  
5           foundation.

6                   THE WITNESS:   So the -- the sign-ups were --  
7           there was a list of every text message that was  
8           received that met the criteria for being signed up in  
9           the -- in the database.  There was a -- a record of  
10          that in that database.

11                  MR. GLAPION:   Q.   Well, was anyone review --  
12          manually reviewing each sign-up message to determine  
13          whether it met the criteria that you just mentioned?

14                A    I do not know.

15                Q    Are you aware, while you were there, of  
16          anyone manually reviewing each text message, SMS  
17          message, prior to it going into the database that you  
18          had mentioned?

19                A    I am not.

20                  MR. DARMSTADTER:   Object to form.

21                  MR. GLAPION:   Q.   What kind of database was  
22          this?

23                A    SQL.

24                Q    You said SQL?

25                A    Correct.

1 the application functioned correctly?

2 A If you look at the incoming logs and the  
3 outgoing logs, you can verify that, if somebody  
4 subscribed, that they're getting a text message. You  
5 should be able to verify that, if somebody  
6 unsubscribed, that they're no longer getting text  
7 messages; things of that nature.

8 I don't recall specific tests. But that's  
9 the nature of the tests that you would run by looking  
10 at that data.

11 Q So, did you specifically review text messages  
12 for unsubscribe requests?

13 A I don't recall. I believe those texts were  
14 automated. I don't recall specifically looking for --  
15 for those.

16 MR. GLAPION: Can we hand the court  
17 reporter -- Audrey, can we hand the court reporter 34.

18 (Document marked Exhibit 24A  
19 for identification.)

20 MR. GLAPION: And Seth, I believe this is one  
21 of the ones I e-mailed to you. I can't pull it up on  
22 the screen.

23 THE REPORTER: It's before the witness.

24 MR. GLAPION: Thank you.

25 Q And Jonathan, you can certainly take your

# EXHIBIT I







**GZJ KDK'L'**

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

GLOBAL PRIVATE OPPORTUNITIES  
PARTNERS II LP; GLOBAL PRIVATE  
OPPORTUNITIES PARTNERS II OFFSHORE  
HOLDINGS LP; GLOBAL PRIVATE  
OPPORTUNITIES PARTNERS II  
AGGREGATOR DEL LP; ATLAS PRIVATE  
HOLDINGS, LLC; LEERINK  
TRANSFORMATION FUND I L.P.; LEERINK  
TRANSFORMATION PARTNERS STRATEGIC  
FUND I L.P.; MASSACHUSETTS INNOVATION  
CATALYST FUND I L.P.; PGVC-OUTCOME  
HEALTH LLC; CAPITALG, LP; EMERSON  
COLLECTIVE INVESTMENTS, LLC;  
NORWEST VENTURE PARTNERS XIII, LP;  
PRUDENCE OUTCOME HOLDINGS, LLC;  
HAMILTON LANE CO-INVESTMENT FUND III  
HOLDINGS-2 LP; HAMILTON LANE PRIVATE  
EQUITY FUND IX HOLDINGS LP; ALPHA  
ANNEX OUTCOME HEALTH FUND LLC,  
ALPHA VENTURE PARTNERS FUND, L.P., and  
ALPHA VENTURE PARTNERS FUND II, L.P.,

Plaintiffs,

vs.

RISHI SHAH; OUTCOME HOLDINGS, LLC;  
CONTEXTMEDIA HEALTH HOLDINGS, LLC;  
OUTCOME, INC.; GRAVITAS HOLDINGS,  
LLC; and SHRADHA AGARWAL,

Defendants.

Index No. 656800/2017

**SUMMONS**

Date Index No. Purchased:

November 7, 2017

**TO THE ABOVE NAMED DEFENDANTS:**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a  
copy of your answer, or, if the complaint is not served with this summons, to serve a notice of

appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue is proper in this County pursuant to CPLR §§ 501 and 503 because Outcome Holdings, LLC; Contextmedia Health Holdings, LLC; and Outcome, Inc. consented to venue in this Court by the Purchase Agreement before the action was commenced, because events alleged herein took place in New York, because Rishi Shah, Shradha Agarwal, and Gravitas Holdings, LLC are closely related to those defendants and regularly conduct business in New York, because defendant Shah executed the consent on behalf of those defendants, and because plaintiffs Global Private Opportunities Partners II LP and Global Private Opportunities Partners II Aggregator Del LP reside in New York.

Dated: New York, New York  
November 12, 2017

WACHTELL, LIPTON, ROSEN & KATZ

/s/ Marc Wolinsky

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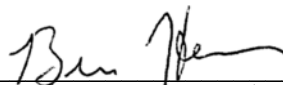


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**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION**

GLOBAL PRIVATE OPPORTUNITIES  
PARTNERS II LP; GLOBAL PRIVATE  
OPPORTUNITIES PARTNERS II OFFSHORE  
HOLDINGS LP; GLOBAL PRIVATE  
OPPORTUNITIES PARTNERS II  
AGGREGATOR DEL LP; ATLAS PRIVATE  
HOLDINGS, LLC; LEERINK  
TRANSFORMATION FUND I L.P.; LEERINK  
TRANSFORMATION PARTNERS STRATEGIC  
FUND I L.P.; MASSACHUSETTS INNOVATION  
CATALYST FUND I L.P.; PGVC-OUTCOME  
HEALTH LLC; CAPITALG, LP; EMERSON  
COLLECTIVE INVESTMENTS, LLC;  
NORWEST VENTURE PARTNERS XIII, LP;  
PRUDENCE OUTCOME HOLDINGS, LLC;  
HAMILTON LANE CO-INVESTMENT FUND III  
HOLDINGS-2 LP; HAMILTON LANE PRIVATE  
EQUITY FUND IX HOLDINGS LP; ALPHA  
ANNEX OUTCOME HEALTH FUND LLC,  
ALPHA VENTURE PARTNERS FUND, L.P., and  
ALPHA VENTURE PARTNERS FUND II, L.P.,

Plaintiffs,

vs.

RISHI SHAH; OUTCOME HOLDINGS, LLC;  
CONTEXTMEDIA HEALTH HOLDINGS, LLC;  
OUTCOME, INC.; GRAVITAS HOLDINGS,  
LLC; and SHRADHA AGARWAL,

Defendants.

Index No. 656800/2017

**VERIFIED AMENDED  
COMPLAINT**

Plaintiffs Global Private Opportunities Partners II LP (“GPOP Onshore”), Global Private  
Opportunities Partners II Offshore Holdings LP (“GPOP Offshore”), and Global Private  
Opportunities Partners II Aggregator Del LP (“GPOP Aggregator,” and together with GPOP

Onshore and GPOP Offshore, “GPOP”), Atlas Private Holdings, LLC (“Atlas”), Leerink Transformation Fund I L.P. (“Leerink Transformation Fund”), Leerink Transformation Partners Strategic Fund I L.P. (“LTP Strategic Fund”), Massachusetts Innovation Catalyst Fund I L.P. (“Massachusetts Innovation Fund,” and together with Leerink Transformation Fund and LTP Strategic Fund, “LTP”), PGVC-Outcome Health LLC (“PGVC”), CapitalG, LP (“Capital G”), Emerson Collective Investments, LLC (“ECI”), Norwest Venture Partners XIII, LP (“Norwest”), Prudence Outcome Holdings, LLC (“Prudence”), Hamilton Lane Co-Investment Fund III Holdings-2 LP (“Hamilton Lane III”), Hamilton Lane Private Equity Fund IX Holdings LP (“Hamilton Lane IX,” and together with Hamilton Lane III, “Hamilton Lane”), Alpha Annex Outcome Health Fund LLC (“Alpha Annex”), Alpha Venture Partners Fund, L.P. (“Alpha Venture”), and Alpha Venture Partners Fund II, L.P. (“Alpha Venture II,” and together with Alpha Annex and Alpha Venture, “AVP,” and AVP, together with GPOP, Atlas, LTP, PGVC, Capital G, ECI, Norwest, Prudence, and Hamilton Lane, “plaintiffs”), by and through their attorneys, for their Complaint in the above-captioned action against defendants Rishi Shah and Shradha Agarwal (collectively, the “Founder Defendants”), Outcome Holdings, LLC (“Outcome Holdings”); ContextMedia Health Holdings, LLC (“CMH Holdings”); Outcome, Inc. (“TopCo,” and together with Outcome Holdings and CMH Holdings, the “Outcome Defendants”); and Gravitas Holdings, LLC (“Gravitas,” and together with the Founder Defendants and the Outcome Defendants, “defendants”), allege as follows:

### **INTRODUCTION**

1. Plaintiffs bring this action for fraud, negligent misrepresentation, breach of contract, and rescission in response to defendants’ scheme to mislead investors, including GPOP, Atlas, LTP, PGVC, Capital G, ECI, Norwest, Prudence, Hamilton Lane, and AVP. Plaintiffs

take allegations of fraud seriously. They are taking this step to protect their investors and the future of Outcome Health.

2. The Founder Defendants and the Outcome Defendants run a business known as Outcome Health through Outcome, LLC, a subsidiary of Outcome Holdings. Outcome Health installs video screens and tablets in healthcare providers' offices, which allow patients and healthcare providers to watch videos and use interactive features during appointments. Outcome Health earns revenue primarily by selling advertising time on its screens and tablets to drug companies.

3. Beginning in March 2017, plaintiffs and others invested \$487.5 million in TopCo, an entity that itself holds approximately 10% of the equity in Outcome Holdings. GOP alone invested \$100 million pursuant to a Master Transaction and Equity Purchase Agreement (the "Purchase Agreement"). Plaintiffs together represent \$398.94 million of the \$487.5 million private investment.

4. Of the \$487.5 million ultimately raised from outside investors, \$225 million was set aside to be distributed to the Founder Defendants. That \$225 million is supposed to be held at Gravitas, a subsidiary of Outcome Holdings.

5. Subsequent to plaintiffs' investments, the *Wall Street Journal* reported that, from at least 2014 to 2016, Outcome Health had engaged in a scheme to defraud and mislead its advertising customers about the extent and value of its services. *See* Ex. A at 4.

6. GOP quickly moved to investigate these claims, pressing the principal founder of the company, defendant Rishi Shah, for access to raw data that would permit GOP to determine whether it was also a victim of the fraud scheme. Despite defendants' delays, GOP

ultimately learned that Outcome Holdings and TopCo had presented fraudulent and false information to GPOP and other investors to induce them to make their investments.

7. Had plaintiffs known the truth about Outcome Holdings and Outcome Health, they never would have made their investments. Instead, because they relied on defendants' knowingly false data and financial reports, and false representations in the Purchase Agreement, plaintiffs now hold securities that may be worthless. As a result, plaintiffs are entitled to rescission of their investment and damages to compensate them for defendants' fraud, negligent misrepresentations, and breaches of contract.

8. The ability of plaintiffs and the other investors in TopCo to obtain the complete relief to which they are entitled is in substantial jeopardy. Since the *Wall Street Journal* first reported Outcome Health's fraud, GPOP has repeatedly sought proof from Outcome Holdings and Shah that the \$225 million remains at Gravitass and is held in liquid funds. Defendants refused to provide that proof.

9. Instead, even as defendants were dodging GPOP's demands for information about the Gravitass funds, Summit Trail Advisors ("Summit Trail"), a private investment firm that was apparently acting on Shah's behalf, informed plaintiff LTP on October 31 that Gravitass was "likely transitioning its assets into a different entity." *See* Ex. B. In other words, shortly after the *Wall Street Journal* first exposed the fraud at Outcome Health, and while GPOP was repeatedly seeking assurances about the location and liquidity of the \$225 million, Shah was taking steps to move those very funds out of Gravitass.

10. To date, Outcome Holdings has only offered to commit that \$100 million would remain in an unidentified account, and has failed to provide any documentation establishing

where the full \$225 million is located. GOP then demanded that Outcome Holdings and Shah agree to place the money in an escrow account for 30 days. They refused that request as well.

11. Accordingly, in addition to the other relief they seek, plaintiffs are seeking an order of attachment and injunctive relief against Shah, Agarwal and Gravitass so that the \$225 million that is supposed to be in Gravitass will remain available to satisfy the claims of plaintiffs and the other investors.

### **PARTIES**

12. Plaintiff GOP Onshore is a Delaware limited partnership with its principal place of business in New York.

13. Plaintiff GOP Offshore is a Cayman Islands limited partnership with its principal place of business in New York.

14. Plaintiff GOP Aggregator is a Delaware limited partnership with its principal place of business in New York.

15. Plaintiff Atlas is a Delaware limited liability company with its principal place of business in Illinois.

16. Plaintiff Leerink Transformation Fund is a Delaware limited partnership with its principal place of business in Massachusetts.

17. Plaintiff LTP Strategic Fund is a Delaware limited partnership with its principal place of business in Massachusetts.

18. Plaintiff Massachusetts Innovation Fund is a Delaware limited partnership with its principal place of business in Massachusetts.

19. Plaintiff PGVC is a Delaware limited liability company with its principal place of business in Illinois.

20. Plaintiff Capital G is a Delaware limited partnership with its principal place of business in California.

21. Plaintiff ECI is a California limited liability corporation with its principal place of business in California.

22. Plaintiff Norwest is a Delaware limited partnership with its principal place of business in California.

23. Plaintiff Prudence is a Delaware limited liability corporation with its principal place of business in New York.

24. Plaintiff Hamilton Lane III is a Delaware limited partnership with its principal place of business in Pennsylvania.

25. Plaintiff Hamilton Lane IX is a Delaware limited partnership with its principal place of business in Pennsylvania.

26. Plaintiff Alpha Annex is a Delaware limited liability company with its principal place of business in New York.

27. Plaintiff Alpha Venture is a Delaware limited partnership with its principal place of business in New York.

28. Plaintiff Alpha Venture II is a Delaware limited partnership with its principal place of business in New York.

29. Defendant Rishi Shah is a resident of Illinois. Shah co-founded Outcome Health in 2006 and at all relevant times has been the CEO of all of the Outcome Defendants.

30. Defendant Outcome Holdings is a Delaware limited liability company with its principal place of business in Illinois. Outcome Holdings is controlled by the Founder Defendants.



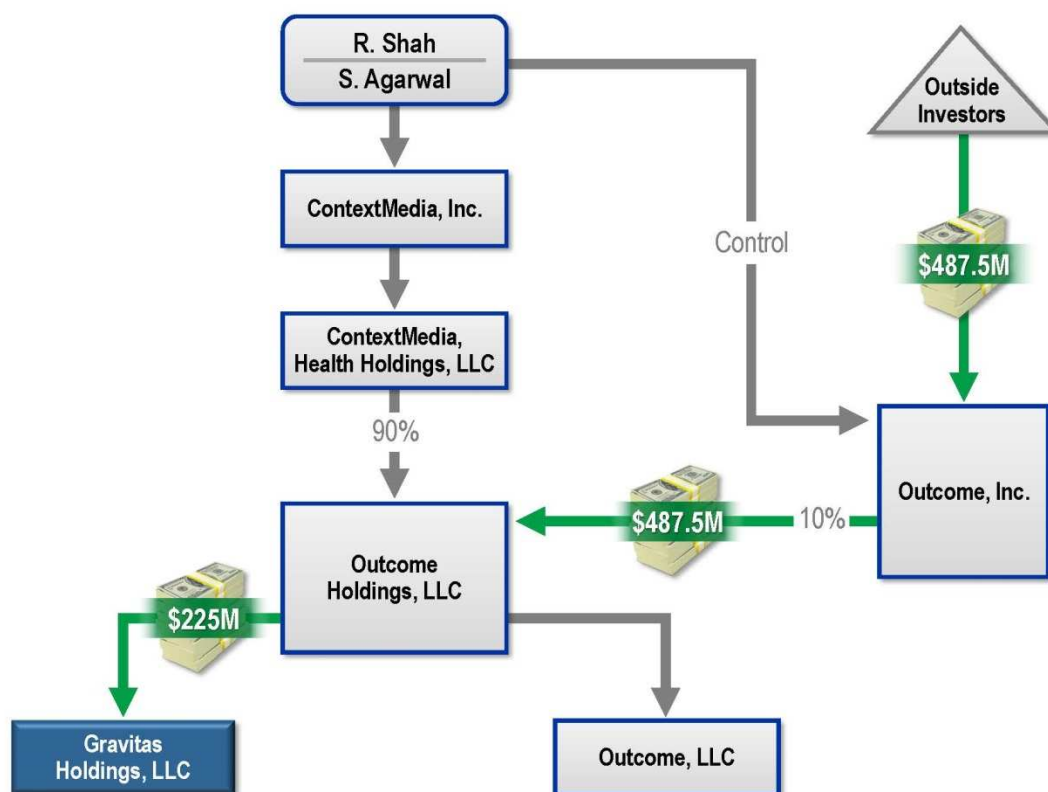
31. Defendant CMH Holdings is a Delaware limited liability company with its principal place of business in Illinois. CMH Holdings is controlled by the Founder Defendants. CMH Holdings is the majority shareholder of Outcome Holdings.

32. Defendant TopCo is a Delaware corporation with its principal place of business in Illinois. TopCo is controlled by the Founder Defendants.

33. Defendant Gravitas is a Delaware limited liability company with its principal place of business in Illinois. Gravitas is a subsidiary of Outcome Holdings and is controlled by the Founder Defendants.

34. Defendant Shradha Agarwal is a resident of Illinois. Agarwal co-founded Outcome Health in 2006 and at all relevant times has been its President.

35. The relationships among defendants are illustrated below:



## JURISDICTION AND VENUE

36. This Court has personal jurisdiction over defendants pursuant to CPLR §§ 301 and 302(a) because the Outcome Defendants consented to jurisdiction in New York and because the Founder Defendants and Gravitas are closely related to the Outcome Defendants and regularly conduct business in New York. Defendant Shah executed the Purchase Agreement on behalf of the Outcome Defendants.

37. Venue is proper in this Court pursuant to CPLR §§ 501 and 503 because the Outcome Defendants consented to venue in this Court by the Purchase Agreement before the action was commenced, because events alleged herein took place in New York, because the Founder Defendants and Gravitas are closely related to the Outcome Defendants and regularly conduct business in New York, because defendant Shah executed the Purchase Agreement on behalf of the Outcome Defendants, and because plaintiffs GOP Onshore, GOP Aggregator, Prudence, and AVP reside in New York.

## FACTUAL ALLEGATIONS

### A. The Business of Outcome Health

38. Outcome Health was founded in 2006 by the Founder Defendants and at all times has been controlled by them.

39. Outcome Health is an advertising platform for healthcare products. Outcome Health installs video screens and tablets in healthcare providers' offices, typically free of charge to the healthcare provider. Outcome Health then sells advertising time on those screens to drug companies and other healthcare product companies.

40. According to Outcome Health, it has installed its devices in tens of thousands of offices across the country, and prior to the time that the *Wall Street Journal* reported that it had

engaged in fraud, its clients included many top pharmaceutical companies, including Pfizer, Bristol-Myers Squibb, and Novartis.

**B. GPOP's Investment in TopCo**

41. In 2017, pursuant to the Purchase Agreement, GPOP invested \$100 million in TopCo as part of a private equity raise.

42. The parties to the Purchase Agreement were GPOP Onshore, GPOP Offshore, Outcome Holdings, CMH Holdings, and TopCo. Under the Purchase Agreement, GPOP Onshore and GPOP Offshore invested \$100 million in TopCo in exchange for Class C shares of TopCo. TopCo then transferred that \$100 million to Outcome Holdings in exchange for Class A Units of Outcome Holdings.

43. GPOP Onshore and GPOP Offshore subsequently transferred their TopCo shares and rights to GPOP Aggregator.

44. In effect, GPOP was investing in a holding company whose only assets were units of Outcome Holdings. Outcome Holdings, in turn, owns the entities that operate as Outcome Health.

45. GPOP made its investment in TopCo in reliance on, among other things, 2015 case studies provided by defendants during due diligence, which were purportedly prepared by IMS Health ("IMS") (a third-party health information company), and which supposedly showed the return on investment ("ROI") for selected Outcome Health advertising campaigns. These case studies were evidence that Outcome Health's advertising model worked and were essential to GPOP's valuation of TopCo and Outcome Holdings and its decision to invest.

46. The ROI data reflected in the case studies provided by defendants was a principal basis for GPOP's investment. In promotional materials, defendants claimed that advertising campaigns run on the Outcome Health network would generate an ROI of "5x+" — *i.e.*, more

than 500% — for advertisers. Ex. K at 15. That purported rate of return was more than twice as high as the ROI for advertisements run on television, and about 45% better than the ROI for advertisements run online. *Id.* The IMS case studies apparently validated defendants' claims.

47. Based on the falsified ROI data in the IMS case studies, GPOP determined that Outcome Health had significant potential for growth. In promotional materials, defendants represented that less than 1% of all advertising dollars in the healthcare industry were spent on the Outcome Health network. *Id.* GPOP validated this claim in its own due diligence. In other words, Outcome Health had barely penetrated the market.

48. GPOP also relied on the accuracy of financial statements provided by TopCo and Outcome Holdings.

49. GPOP further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. These representations and covenants include the following:

- a. Section 2.8 of the Purchase Agreement, which represents that “there is no claim . . . or investigation pending” against Outcome Holdings.
- b. Section 2.10 of the Purchase Agreement, which represents that Outcome Holdings is not in violation “of any Law . . . other than as has not had and would not reasonably be expected to have a Material Adverse Effect.”<sup>1</sup>
- c. Section 2.11 of the Purchase Agreement, which represents that Outcome Holdings is not in breach or violation of any “Material Agreements”  
(defined to include contracts involving obligations in excess of \$1,000,000

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<sup>1</sup> A “Material Adverse Effect” is defined as “a material adverse effect on the business, prospects, assets (including intangible assets and licenses), liabilities, financial condition, property or results of operation of [Outcome Holdings] and its Subsidiaries, taken as a whole,” with certain exceptions not applicable here.

in any one-year period), which breach or violation has or would reasonably be expected to have a Material Adverse Effect.

- d. Section 2.12 of the Purchase Agreement, which represents that Outcome Holdings has provided all of the information TopCo has requested for deciding whether to purchase units of Outcome Holdings.
- e. Section 2.16 of the Purchase Agreement, which represents that Outcome Holdings has provided financial statements to TopCo that “have been prepared in accordance with generally accepted accounting principles applied on a consistent basis throughout the periods indicated” and that “fairly present in all material respects the financial condition and the operating results of [Outcome Holdings] and its Subsidiaries.” Section 2.16 specifically represents that Outcome Holdings does not have any undisclosed “liabilities, contingent or otherwise, which would be required to be reflected on the face of a balance sheet prepared in accordance with generally accepted accounting principles,” other than certain liabilities not relevant here.
- f. Section 6.1(d) of the Purchase Agreement, which provides that so long as GPOP holds its equity investment, Outcome Holdings will “comply in all material respects with all applicable Laws, except where the necessity of compliance therewith is contested in good faith by appropriate proceedings or where the failure to comply would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.”

**C. Atlas's Investment**

50. In March 2017, Atlas invested \$20 million in TopCo as an additional investor under the Purchase Agreement.

51. Atlas made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

52. Atlas further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**D. LTP's Investment**

53. In April and July 2017, LTP invested \$25.6 million in TopCo as an additional investor under the Purchase Agreement.

54. LTP made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

55. LTP further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**E. PGVC's Investment**

56. In March 2017, PGVC invested \$50 million in TopCo as an additional investor under the Purchase Agreement.

57. PGVC made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

58. PGVC further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**F. Capital G's Investment**

59. In March 2017, Capital G invested \$50 million in TopCo as an additional investor under the Purchase Agreement.

60. Capital G made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

61. Capital G further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**G. ECI's Investment**

62. In April 2017, ECI invested \$50 million in TopCo as an additional investor under the Purchase Agreement.

63. ECI made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

64. ECI further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**H. Norwest's Investment**

65. In March 2017, Norwest invested \$50 million in TopCo as an additional investor under the Purchase Agreement.

66. Norwest made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

67. Norwest further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**I. Prudence's Investment**

68. In May 2017, Prudence invested \$6,750,000 in TopCo as an additional investor under the Purchase Agreement.

69. Prudence made its investment in TopCo in reliance on, among other things, information contained in the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

70. Prudence further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**J. Hamilton Lane's Investment**

71. In April 2017, Hamilton Lane invested \$40 million in TopCo as an additional investor under the Purchase Agreement.

72. Hamilton Lane made its investment in TopCo in reliance on, among other things, information contained in the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

73. Hamilton Lane further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.



**K. AVP's Investment**

74. In April, May, and July 2017, AVP invested a total of \$6,585,800.50 in TopCo as an additional investor under the Purchase Agreement.

75. AVP made its investment in TopCo in reliance on, among other things, the case studies provided during due diligence, discussed above, and the accuracy of financial statements provided by TopCo and Outcome Holdings.

76. AVP further relied on the representations by and covenants of Outcome Holdings, acting under the control of CMH Holdings and the Founder Defendants, included in the Purchase Agreement. The relevant representations and covenants are alleged above.

**L. Outcome Health's Scheme to Defraud Its Customers**

77. Upon information and belief, as reported by the *Wall Street Journal* in the online edition on October 12, 2017, and as described below, Outcome Health engaged in a scheme to defraud and mislead its customers from at least 2014 to 2016. The scheme was directed, in part, by Ashik Desai, a top lieutenant of Shah's, who held the title Executive Vice President of Business Growth, and who has since been either fired or put on paid leave.

**a. Inflated List Matches**

78. Outcome Health typically bills its clients based on the number of screens that the clients' advertisements will supposedly play on. This number is identified using a two-step process known as "list matching." First, the client identifies a target list of healthcare providers whose patients the company wishes to advertise to. Second, Outcome Health matches that target list against its own list of offices with screens installed.

79. Upon information and belief, from at least 2014 to 2016, Outcome Health sometimes charged clients for a list match showing materially more screens than Outcome Health had in fact installed. In some cases, Outcome Health charged for doctors it hoped would

install its screens but had not yet done so. In other cases, it charged separately for multiple doctors practicing at the same address, but in different office suites, even if not all had screens installed.

80. Upon information and belief, clients were not informed that they were being billed for doctors who had not installed screens. Moreover, in order to prevent clients from learning of the inflated numbers, Outcome Health would decline to provide a list of matched doctors' names, citing privacy concerns.

81. Upon information and belief, Shah was aware of these misrepresentations by at least summer 2014. That year, a client — Johnson & Johnson — complained to Outcome Health after it discovered that no screens had been installed in some of the offices where it was being charged to run ads. Shah apologized and agreed to reduce Johnson & Johnson's costs.

**b. Inflated Advertising Results**

82. Upon information and belief, Outcome Health demonstrates the value of its services to clients through screenshots of ads running in doctors' offices, patient surveys, and third-party data. Instances of each of these categories were manipulated to present misleadingly positive results.

83. Upon information and belief, Outcome Health is able to remotely capture screenshots of tablets or screens in doctors' offices. Per contractual requirements with certain clients, Outcome Health provided these clients with screenshots purportedly showing that their ads had run in doctors' offices. However, rather than using actual screenshots from doctors' offices, Outcome Health would sometimes use screenshots of an ad from its own employees' computers, edited to add a timestamp and doctor identification number to make them appear genuine.

84. Upon information and belief, per contractual requirements with certain clients, Outcome Health provided these clients with surveys of patients and doctors to show how they responded to ads. These surveys, however, sometimes had a low response rate. As a result, Outcome Health would in some cases present clients with made up, purposefully inflated numbers of survey respondents.

85. Upon information and belief, per contractual requirements with certain clients, Outcome Health commissioned IMS to estimate how many more prescriptions are written for a drug as a result of ad runs. On multiple occasions, beginning at least in 2014, Outcome Health altered the data it received from IMS before passing the altered data on to clients. Desai received at least one client complaint about the inaccurate IMS data in May 2016.

**M. The Founder Defendants' Knowledge of the Scheme**

86. Upon information and belief, the Founder Defendants either knew of, or recklessly disregarded, the scheme. In addition to the notice provided by the complaint to Shah by Johnson & Johnson, as well as the direct involvement of one of Shah's deputies, there has been dramatic turnover in Outcome Health's highest ranks. Exhibit L is an annotated list of Outcome Health's senior management provided to GPOP during due diligence. Out of the 10 executives listed who are not the Founder Defendants, five are gone or on paid leave: Ashik Desai (Executive Vice President of Business Growth, July 2017 to October 2017), Madan Nagaldinne (Chief People Officer, August 2016 to August 2017), Vivek Kundra (Chief Operating Officer, January 2017 to October 2017), Sameer Kazi (Chief Operating Officer – Life Sciences Group, employed for less than three weeks in early 2017), and Parag Vaish (Senior Vice President of Product Growth, January 2017 to June 2017).

87. Upon information and belief, at least one of the departing executives, Sameer Kazi, the Chief Operating Officer of the Life Sciences Group, confronted Shah with concerns

about Outcome Health's business practices and left after less than three weeks on the job. *See* Ex. A at 3.

88. And on November 3, 2017, the *Wall Street Journal* reported that Outcome Health's Chief Operating Officer, Vivek Kundra, left the company just three months after joining it as Chief Operating Officer. Ex. C.

89. Based on GOP's investigation to date, upon information and belief, at least seventeen other high-level executives, several of whom reported directly to the Founder Defendants, departed from Outcome Health in 2017, some shortly after joining: (i) Director, Head of Sales Strategy and Operations, January 2017 to October 2017; (ii) Head of Growth Strategy, Insights, and Analytics, March 2017 to November 2017; (iii) Senior Vice President of Research and Development, September 2016 to September 2017; (iv) Director of Operations, June 2016 to June 2017; (v) Senior Vice President of Life Sciences Solutions, October 2016 to August 2017; (vi) Corporate Counsel, November 2015 to January 2017; (vii) Senior Vice President, Head of Legal, May 2017 to October 2017; (viii) Vice President, March 2017 to October 2017; (ix) Senior Vice President of Business Development, July 2016 to April 2017; (x) Senior Product Manager, May 2016 to May 2017; (xi) Social Media Manager, January 2017 to July 2017; (xii) Strategy Solutions Director, July 2016 to March 2017; (xiii) Salesforce Architect, April 2016 to June 2017; (xiv) Vice President of Member Experience and Operations, June 2015 to September 2017; (xv) Vice President of Engineering, June 2016 to September 2017; (xvi) Growth Strategy Associate, September 2016 to May 2017; and (xvii) Senior Vice President, September 2016 to March 2017.

**N. GPOP's Investigation of Outcome Health's Fraud**

90. Since the *Wall Street Journal* article reporting Outcome Health's fraud, GPOP has been investigating whether GPOP and the other investors in TopCo had also been defrauded and/or misled.

91. As part of that investigation, on October 17, 2017, GPOP called Shah to request access to the raw IMS data that would enable GPOP to verify the viability of the Outcome Health business.

92. Two days later, on October 19, 2017, GPOP emailed Outcome Health's General Counsel and expressly asked Outcome Health to provide raw IMS data that would allow GPOP to verify the accuracy of the data contained in the 2015 cases studies that ostensibly had been prepared by IMS — *i.e.*, the raw IMS data from 2015. *See* Ex. D. GPOP was concerned that defendants had inflated the IMS data presented to GPOP and other investors — just as it had inflated the IMS data that it provided to its customers.

93. For the next two weeks, GPOP repeatedly followed up on this request, including with Shah, and repeatedly was told that Outcome Health would soon provide the data in its raw form from IMS. *See* Exs. E through F.

94. On November 1, 2017, at a breakfast meeting in New York, Shah was expressly told, again, that GPOP wanted unfettered access to raw IMS data so GPOP could ensure that Outcome Health was a valid business. Shah again said he would do what he could to grant GPOP the access it needed.

95. Finally, on November 2, 2017, Outcome Health employees met in person with GPOP. GPOP understood, based on its repeated demands to Shah and his lieutenants, that the purpose of the meeting was to parse raw IMS data from 2015. The Outcome Health employees,

however, were only prepared to give a high-level presentation about Outcome Health's use of IMS data.

96. When GPOP personnel reiterated the need for granular review of the data, the Outcome Health employees at the meeting initially offered only to discuss the methods of how IMS data is collected and to review data that they had collected regarding 2017. In passing, however, one of the Outcome Health employees mentioned that he had "concerns" with some of the data from 2015. GPOP then asked for more information about those concerns, and the employees referenced finding three reports that might be fraudulent related to an inquiry of a pharmaceutical client that occurred in 2015 reports. GPOP then reviewed these reports with the team and discovered manipulations consistent with those reported by the *Wall Street Journal*.

97. GPOP ultimately convinced the Outcome Health employees to show GPOP at the November 2 meeting the underlying data for the 2015 studies presented during due diligence. The senior Outcome representative at the meeting was Michael Getty Atienza, the Head of Growth Strategy, Insight & Analytics.

98. Upon reviewing the underlying data, GPOP discovered that GPOP and all of the investors that had relied upon the IMS case studies and the integrity of Outcome Holdings' financial statements had been defrauded and/or misled. A summary chart of the false information identified by GPOP in the case studies is provided in Exhibit M. As set forth in the chart, of the 28 case studies presented in the due diligence, ten had material misstatements that overstated the effectiveness and reach of Outcome Health's advertising campaigns. No data was made available for seven of the studies.

99. The following day, Mr. Atienza resigned from the company and through counsel accused Shah and Outcome Health of fraud and misrepresentation. In his letter, Mr. Atienza's

counsel claimed that Outcome Health fraudulently induced Mr. Atienza to accept employment and remain employed at Outcome Health with untruthful promises regarding Outcome Health's business and business condition, strength, and growth. *See* Ex. N.

**O. The Other Investor Plaintiffs Were the Victims of the Same Fraud**

100. Upon information and belief, because Atlas's due diligence was based on substantially the same materials as GPOP's (including the IMS case studies provided by Outcome Health), and because GPOP determined that those materials had been manipulated, Atlas believes that it too was defrauded and/or misled.

101. Upon information and belief, because LTP's due diligence was based on substantially the same materials as GPOP's (including the IMS case studies provided by Outcome Health), and because GPOP determined that those materials had been manipulated, LTP believes that it too was defrauded and/or misled.

102. Upon information and belief, because PGVC's due diligence was based on substantially the same materials as GPOP's (including the IMS case studies provided by Outcome Health), PGVC was also defrauded.

103. Upon information and belief, because Capital G's due diligence was based on substantially the same materials as GPOP's (including the IMS case studies provided by Outcome Health), Capital G was also defrauded.

104. Upon information and belief, because ECI's due diligence was based, among other things, on substantially the same materials as GPOP's (including several IMS case studies provided by Outcome Health), ECI was also defrauded.

105. Upon information and belief, because Norwest's due diligence was based on substantially the same materials as GPOP's (including the IMS case studies provided by Outcome Health), Norwest was also defrauded.

106. Upon information and belief, because Prudence's due diligence was based on substantially the same materials as GPOP's (including information contained in the IMS case studies provided by Outcome Health), Prudence was also defrauded.

107. Upon information and belief, because Hamilton Lane's due diligence was based on substantially the same materials as GPOP's (including information contained in the IMS case studies provided by Outcome Health), Hamilton Lane was also defrauded.

108. Upon information and belief, because AVP's due diligence was based on substantially the same materials as GPOP's (including the IMS case studies provided by Outcome Health), AVP was also defrauded and/or misled.

**P. Defendants' Fraudulent and False Statements to Plaintiffs**

**a. Manipulated Case Studies**

109. Outcome Holdings and TopCo provided plaintiffs inaccurate and manipulated case studies that overstated the value and effectiveness of Outcome Health's advertising campaigns.

110. Upon information and belief, Shah was aware or recklessly disregarded that several of the case studies provided to plaintiffs as part of their investment due diligence were falsified. As noted above, Shah's lieutenant Desai had received a complaint about falsified IMS data in May 2016 — just months before the falsified IMS data was provided to plaintiffs. Upon information and belief, based on GPOP's investigation and the *Wall Street Journal's* account of "multiple" incidents of altered IMS reports, the May 2016 complaint reflected a much broader problem. Upon information and belief, Shah, an engaged CEO, was aware of or recklessly disregarded this complaint. And upon information and belief, Shah was therefore aware of the fact, or recklessly disregarded the very high likelihood, that the case studies provided to plaintiffs were falsified as well.



**b. Misleading Financial Statements**

111. Upon information and belief, because Outcome Health defrauded and misled its advertising clients, the financial statements that it provided to plaintiffs and other investors were materially false and misleading.

112. Upon information and belief, the revenue figures Outcome Holdings and TopCo presented included revenue resulting from overbilling clients for advertisements that never ran on any screen. Now that its fraud has been discovered, Outcome Health will have to refund its clients or provide “make good” payments, either in the form of cash payments or free advertising, to make up for not fulfilling its contractual agreements.

113. Upon information and belief, the revenue figures were also materially misstated or rendered misleading because of Outcome Health’s misstatements to customers about the outcomes of its ad campaigns. Again, Outcome Health will either have to refund clients or provide “make goods,” which would result in materially reduced revenue in the periods in which the revenue was recognized.

114. Alternatively or in addition, upon information and belief, Outcome Holdings materially understated Outcome Holdings’ contingent liabilities. As a result of defrauding and misleading its clients, Outcome Holdings had a contingent liability each year from at least 2014 to at least 2016 to refund its customers or otherwise pay “make goods” or damages, which contingent liabilities were both probable and reasonably estimable by each year’s end.

115. As a result, Outcome Holdings’ revenue was materially overstated in the periods in which the revenue was recognized.

116. Indeed, as the *Wall Street Journal* reported on November 3, 2017, Outcome Health has already offered tens of millions of dollars of free advertising this year to make up for shortfalls. Exs. C, G. That fact was never disclosed to the Outcome Holdings board.

**c. False Representations**

117. Upon information and belief, defendants knew, or recklessly disregarded, that several of the representations Outcome Holdings made in the Purchase Agreement were materially false and intended for plaintiffs to rely on those false representations in making their investments.

118. Upon information and belief, Section 2.8 of the Purchase Agreement (“Litigation”) was materially false because Outcome Health’s defrauded and misled clients had claims against Outcome Holdings.

119. Upon information and belief, Section 2.10 of the Purchase Agreement (“No Violation”) was materially false because Outcome Holdings was in violation of numerous anti-fraud laws, the violation of which will have a material adverse impact on Outcome Holdings’ business.

120. Upon information and belief, Section 2.11 of the Purchase Agreement (“Agreements; Actions”) was materially false because Outcome Holdings was in breach of its material agreements with its defrauded clients, the breach of which will have a material adverse impact on Outcome Holdings’ business.

121. Section 2.12 of the Purchase Agreement (“Disclosure”) was false because the due diligence disclosures Outcome Holdings provided, including the IMS case studies, were materially false.

122. Upon information and belief, Section 2.16 of the Purchase Agreement (“Financial Statements”) was materially false because Outcome Holdings’ financial statements were materially misleading, and in particular materially overstated revenue and/or understated contingent liabilities.

123. Upon information and belief, defendants have also breached Section 6.1(d) of the Purchase Agreement (“Affirmative Company Covenants”), as Outcome Holdings has not complied in all material respects with all applicable laws, which violations will have a material adverse impact on Outcome Holdings’ business.

**Q. The Department of Justice and the Securities and Exchange Commission Are Investigating the Outcome Health Fraud.**

124. Goldman Sachs, Leerink Transformation Partners, the Pritzker Group, Norwest, and Balyasny — entities affiliated with several of the plaintiff investment funds — are expecting grand jury subpoenas as soon as tomorrow from the Department of Justice to aid the Department in its investigation of the Outcome Health fraud. Additional inquiries are expected from the Securities and Exchange Commission. Plaintiffs are cooperating with the investigations.

**R. There Is a Threat That the Founder Defendants and Gravitas Will Frustrate the Investors’ Ability to Obtain Complete Relief**

125. Under the transaction documents governing the private equity raise, the Founder Defendants were contractually entitled to a distribution of \$225 million out of the \$487.5 million raised from outside investors. The Founder Defendants elected to keep the \$225 million in Gravitas in order to avoid the taxes that would be triggered by a distribution of proceeds from the capital raise.

126. Under the deal documents, however, the Founder Defendants may distribute funds out of Gravitas by non-unanimous written consent on as short as one day’s notice to the Outcome Holdings board.

127. No such notice has ever been provided. As a result, the \$225 million is supposed to reside at Gravitas.

128. Since the *Wall Street Journal* first reported Outcome Health’s fraud on October 13, GPOP has repeatedly and consistently sought documentation establishing that the \$225

million in fact is located at Gravitas and is held in liquid funds. Shah and Outcome Holdings have refused to provide any documentary proof of the whereabouts of the \$225 million.

129. Instead, on October 31, Summit Trail, apparently on Shah's behalf, sent an email advising LTP that "Gravitas Holdings, LLC is likely transitioning its assets into a different entity." Ex. B. Summit Trail then inquired about the "timing around doing that." LTP did not respond to the October 31 email.

130. Two days later, GPOP determined, based upon its review of the 2015 IMS data, that it had been defrauded. As a result, GPOP immediately redoubled its demand that Outcome Holdings and Shah confirm the whereabouts of the \$225 million and commit that those funds would not leave Gravitas. *See* Ex. H.

131. On November 3, counsel for Outcome Health offered only to commit that \$100 million would remain in an unidentified account for a standstill period of one week. He failed to provide any documentation establishing where the \$225 million is located. *See* Ex. I.

132. In response, GPOP demanded a commitment from Outcome Holdings and Shah that the entire \$225 million be placed in an escrow account at a mutually acceptable financial institution for a period of up to 30 days. GPOP emphasized that the escrow agreement would need to be executed by the close of business of Monday, November 6, 2017. *See* Ex. J.

133. In addition, GPOP demanded, for at least the fourth time, that Outcome Holdings and Shah provide documentation to prove the current location of the \$225 million. *See id.*

134. Defendants have not provided GPOP with the assurances that it has demanded.

135. Upon information and belief, there is a substantial risk that, absent interim remedies, the Founder Defendants and Gravitas will transfer those funds in an effort to frustrate plaintiffs' and the other investors' collection of any eventual judgment.

**COUNT I**  
**Fraud**  
**(Against All Defendants)**

136. Plaintiffs repeat and incorporate the allegations set forth in Paragraphs 1 through 135 as though fully set forth herein.

137. Upon information and belief, defendants provided, or caused Outcome Holdings to provide, falsified case studies to plaintiffs in connection with their investment in TopCo.

138. Upon information and belief, defendants provided, or caused Outcome Holdings to provide, materially false or misleading financial statements to plaintiffs in connection with their investment in TopCo.

139. Upon information and belief, defendants provided, or caused Outcome Holdings to provide, false representations to plaintiffs, namely the representations listed in Paragraphs 118 through 123.

140. Upon information and belief, defendants knew, or recklessly disregarded, that the case studies, financial statements, and representations provided to plaintiffs were false or misleading.

141. Defendants intended that plaintiffs would rely on the case studies, financial statements, and representations provided, and plaintiffs did reasonably rely on those representations in making their investments.

142. Plaintiffs have suffered damages as a result of defendants' fraud, as they now hold securities that may be worthless.

**COUNT II**  
**Breach of Contract**  
**(Against the Outcome Defendants)**

143. Plaintiffs repeat and incorporate the allegations set forth in Paragraphs 1 through 142 as though fully set forth herein.

144. Upon information and belief, the Outcome Defendants breached the Purchase Agreement by providing false representations by Outcome Holdings, namely the representations listed in Paragraphs 118 through 123.

145. Upon information and belief, the Outcome Defendants also breached the covenant set forth in Section 6.1(d) of the Purchase Agreement.

146. Plaintiffs have suffered damages as a result of the Outcome Defendants' breaches, as they now hold securities that may be worthless.

**COUNT III**  
**Negligent Misrepresentation**  
**(Against All Defendants)**

147. Plaintiffs repeat and incorporate the allegations set forth in Paragraphs 1 through 146 as though fully set forth herein.

148. Defendants owed a duty to plaintiffs to impart correct information.

149. Upon information and belief, defendants negligently provided, or caused Outcome Holdings to provide, falsified case studies to plaintiffs in connection with their investment in TopCo.

150. Upon information and belief, defendants negligently provided, or caused Outcome Holdings to provide, materially false financial statements to plaintiffs in connection with their investment in TopCo.

151. Upon information and belief, defendants negligently provided, or caused Outcome Holdings to provide, false representations to plaintiffs, namely the representations listed in Paragraphs 118 through 123.

152. Defendants intended that plaintiffs would rely on the case studies, financial statements, and representations provided, and plaintiffs did reasonably rely on those representations in making their investments.

153. Plaintiffs have suffered damages as a result of defendants' negligent misrepresentations, as they now hold securities that may be worthless.

**COUNT IV**  
**Aiding and Abetting**  
**(Against the Founder Defendants)**

154. Plaintiffs repeat and incorporate the allegations set forth in Paragraphs 1 through 153 as though fully set forth herein.

155. Outcome Holdings provided falsified case studies to plaintiffs in connection with their investments in Outcome.

156. Upon information and belief, Outcome Holdings and Topco provided materially false or misleading financial statements to plaintiffs in connection with their investments in TopCo.

157. Upon information and belief, Outcome Holdings provided false representations to Plaintiffs, namely the representations listed in Paragraphs 118 through 123.

158. Upon information and belief, the Founder Defendants knew, or recklessly disregarded, that the case studies, financial statements, and representations provided to plaintiffs were materially false or misleading.

159. Outcome Holdings intended that plaintiffs would rely on the case studies, financial statements, and representations provided, and plaintiffs did so rely on those representations in making their investments.

160. Upon information and belief, the Founder Defendants knew or recklessly disregarded that the case studies, financial statements, and representations provided to plaintiffs were materially false or misleading.

161. The Founder Defendants controlled Outcome Holdings and TopCo. The Founder Defendants interacted with plaintiffs on defendants' behalf, and Shah executed all of the relevant

agreements on the Outcome Defendants' behalf, and thereby provided substantial assistance to the fraud.

162. Plaintiffs have suffered damages as a result of TopCo's and Outcome Holdings' fraud, as they now hold securities that may be worthless.

**COUNT V  
Rescission  
(Against All Defendants)**

163. Plaintiffs repeat and incorporate the allegations set forth in Paragraphs 1 through 162 as though fully set forth herein.

164. Defendants provided, or caused Outcome Holdings to provide, falsified case studies to Plaintiffs in connection with their investments in TopCo.

165. Upon information and belief, defendants provided, or caused Outcome Holdings to provide, materially false or misleading financial statements to plaintiffs in connection with their investments in TopCo.

166. Upon information and belief, defendants provided, or caused Outcome Holdings to provide, false representations to plaintiffs, namely the representations listed in Paragraphs 118 through 123.

167. Upon information and belief, defendants knew, or recklessly disregarded, that the case studies, financial statements, and representations provided to plaintiffs were false or misleading.

168. Defendants intended that plaintiffs would rely on the case studies, financial statements, and representations provided, and plaintiffs did so rely on those representations in making their investments.

169. Plaintiffs were mistaken as to the accuracy of the representations, and defendants were either mutually mistaken or were aware that the representations were inaccurate.



170. Rescission is therefore necessary to prevent defendants from being unjustly enriched.
171. Plaintiffs have no adequate remedy at law.

**PRAYER FOR RELIEF**

WHEREFORE, plaintiffs respectfully request judgment against defendants be entered as follows:

- a. Attaching the \$225 million held in Gravitas and temporarily, preliminarily and permanently enjoining the Founder Defendants and Gravitas from moving or otherwise disposing of those funds;
- b. Rescinding plaintiffs' investments by requiring defendants to return plaintiffs' investments in exchange for plaintiffs tendering their shares of TopCo;
- c. Awarding money damages against each of the defendants, such amount to be proven at trial;
- d. Awarding punitive damages and exemplary damages against each of the defendants, such amount to be proven at trial;
- e. Awarding plaintiffs pre-judgment interest and post-judgment interest;
- f. Awarding plaintiffs reasonable attorneys' fees; and
- g. Granting such other and further relief as the Court may deem just or proper.

Dated: New York, New York  
November 12, 2017

WACHTELL, LIPTON, ROSEN & KATZ

/s/ Marc Wolinsky

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L.P.; Massachusetts Innovation Catalyst Fund  
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Investments, LLC.*

GOODWIN PROCTER LLP

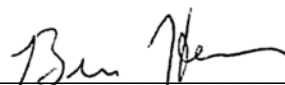


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MORGAN, LEWIS & BOCKIUS LLP

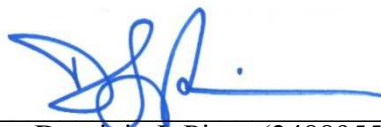


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MINTZ LEVIN COHN FERRIS  
GLOVSKY AND POPEO, P.C.



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*Attorneys for Plaintiffs, Alpha Annex Outcome Health Fund LLC, Alpha Venture Partners Fund, L.P., and Alpha Venture Partners Fund II, L.P.*

## GPOP VERIFICATION

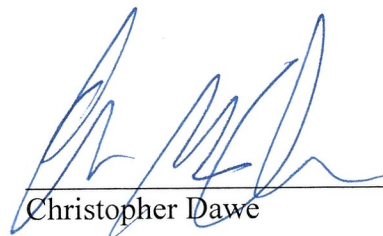
STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK )

I, Christopher Dawe, being duly sworn, depose and say:

I, Christopher Dawe, am an authorized signatory for GS Investment Strategies, LLC, which is an authorized signatory for Global Private Opportunities Partners II LP, one of the plaintiffs in the above captioned action. I have read the foregoing Amended Complaint and know the contents thereof. Except as to the paragraphs verified or to be verified by other plaintiffs in connection with the filing of the initial Complaint or this Amended Complaint, the contents of the Amended Complaint are true to my own knowledge, except as to those matters therein stated to be alleged upon information and belief, and as to those matters I believe them to be true.

  
Christopher Dawe

Sworn to before me  
on this 12 day of November, 2017

  
Notary Public

AARON J. MEYERS  
Notary Public, State of New York  
No. 01ME6231795  
Qualified in Queens County  
Commission Expires November 29, 2018



## ATLAS VERIFICATION


STATE OF NEW YORK )

ss:

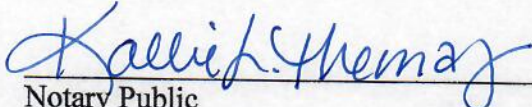
COUNTY OF NEW YORK)

I, Scott Schroeder, being duly sworn, depose and say:

I, Scott Schroeder, am an officer of Atlas Private Holdings, LLC ("Atlas"), one of the plaintiffs in the above captioned action. I have read the foregoing Complaint and know the contents thereof. The contents of paragraphs concerning Atlas's investment, corporate form, due diligence, and reliance are true to my own knowledge, and as to the paragraph stating Atlas's belief that it has been defrauded, I believe the contents of that paragraph to be true.

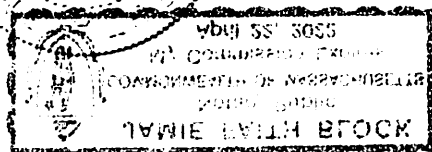
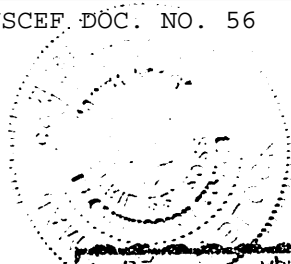
  
\_\_\_\_\_  
Scott Schroeder

Sworn to before me  
on this 6 day of November, 2017

  
\_\_\_\_\_  
Notary Public







VERIFICATIONPGVC-Outcome Health LLC  
VERIFICATION

STATE OF ILLINOIS )

ss:

COUNTY OF COOK)

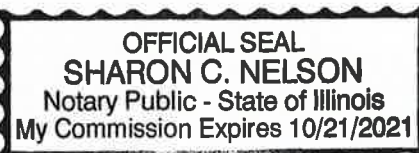
I, Christopher E Girgenti, being duly sworn, depose and say:

I, Christopher E Girgenti am an authorized signatory of Jabodon PT Company, the Managing Member of PGVC-Outcome Health LLC, one of the plaintiffs in the above captioned action. I have read the foregoing Complaint and know the contents thereof. The contents of paragraphs concerning PGVC-Outcome Health LLC's investment, corporate form, due diligence, and reliance are true to my own knowledge, and as to the paragraph stating PGVC-Outcome Health LLC's belief that it has been defrauded, I believe the contents of that paragraph to be true.



Christopher E. Girgenti

Sworn to before me  
on this 6th day of November, 2017



**CapitalG LP VERIFICATION**


STATE OF CALIFORNIA )

ss:


COUNTY OF SANTA CLARA)

I, Jeremiah Gordon, being duly sworn, depose and say:

I, Jeremiah Gordon, am an officer of CapitalG, LP ("Capital G"), one of the plaintiffs in the above captioned action. I have read the foregoing Complaint and know the contents thereof. The contents of paragraphs concerning Capital G's investment, corporate form, due diligence, and reliance are true to my own knowledge, and as to the paragraph stating Capital G's belief that it has been defrauded, I believe the contents of that paragraph to be true.

  
Jeremiah Gordon

Sworn to before me  
on this 6<sup>th</sup> day of November, 2017

  
\_\_\_\_\_

## JURAT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

County of SANTA CLARA

Subscribed and sworn to (or affirmed) before me on this 6<sup>th</sup> day of NOVEMBER

20 17 by JEREMIAH GORDON

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Signature

(Seal)



## OPTIONAL INFORMATION

## DESCRIPTION OF THE ATTACHED DOCUMENT

CapitalG LP Verification

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 1

Document Date: 11/6/2017

Additional Information

## INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - ❖ Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
  - ❖ Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

## EMERSON COLLECTIVE INVESTMENTS, LLC VERIFICATION

STATE OF CALIFORNIA     )  
  )  
COUNTY OF SANTA CLARA)     ss:

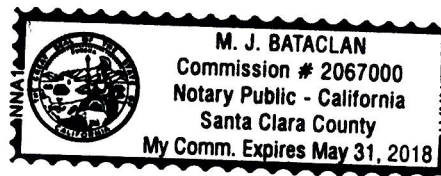
I, Daniel Patrick McHugh, being duly sworn, depose and say:

I, Daniel Patrick McHugh, am a portfolio manager at Emerson Collective Investments, LLC ("ECI"), one of the plaintiffs in the above captioned action. I am authorized to sign this Verification on behalf of ECI. I have read the foregoing Complaint and know the contents thereof. The contents of paragraphs concerning ECI's investment, corporate form, due diligence, and reliance are true to my own knowledge, and as to the paragraph stating ECI's belief that it has been defrauded, I believe the contents of that paragraph to be true.

  
Daniel Patrick McHugh

Subscribed and sworn to (or affirmed) before me on this Sixth day of November, 2017, by Daniel Patrick McHugh, proved to me on the basis of satisfactory evidence to be the person who appeared before me.





## NORWEST VERIFICATION

STATE OF NEW YORK )

ss:

COUNTY OF NEW YORK)

I, David Paul Su, being duly sworn, depose and say:

I, David Paul Su, am an authorized signatory of NVP Associates, LLC, which is an authorized signatory of Norwest Venture Partners XIII LP ("Norwest"), one of the plaintiffs in the above captioned action. I have read the foregoing Complaint and know the contents thereof. The contents of paragraphs concerning Norwest's investment, corporate form, due diligence, and reliance are true to my own knowledge, and as to the paragraph stating Norwest's belief that it has been defrauded, I believe the contents of that paragraph to be true.



David Paul Su

Sworn to before me  
on this 6 day of November, 2017

Attached.  
Notary Public



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )

County of Santa Clara )On November 6, 2017 before me, Katrina Nicole Imahara, Notary Public,

Date

Here Insert Name and Title of the Officer

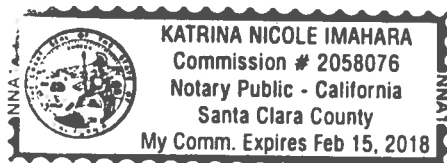
personally appeared David Paul Su

Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature

Signature of Notary Public

Place Notary Seal Above

## OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

## Description of Attached Document

Title or Type of Document: Legal Documents Document Date: November 6, 2017

Number of Pages: \_\_\_\_\_ Signer(s) Other Than Named Above: \_\_\_\_\_

## Capacity(ies) Claimed by Signer(s)

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_

Signer Is Representing: \_\_\_\_\_

Signer's Name: \_\_\_\_\_

☐ Corporate Officer — Title(s): \_\_\_\_\_☐ Partner — ☐ Limited ☐ General☐ Individual ☐ Attorney in Fact☐ Trustee ☐ Guardian or Conservator☐ Other: \_\_\_\_\_


Signer Is Representing: \_\_\_\_\_

# VERIFICATION OF PRUDENCE OUTCOME HOLDINGS, LLC

[illegible]

I, Gavin Myers, being duly sworn, depose and say:

I am the sole member of River Terrace, LLC, which is the Managing Member of Prudence Outcome Holdings, LLC (“Prudence”), one of the Plaintiffs in this action. I have read the foregoing Complaint and know the contents thereof. The contents of the paragraphs concerning Prudence’s investment, corporate form, due diligence, and reliance are true to my own knowledge. I believe the paragraph stating Prudence’s belief that it has been defrauded to be true.

  
Gavin Myers

Sworn to before me  
on this 7<sup>th</sup> day of November, 2017

[Signature]  
Notary Public

**PAUL MAPP**  
**Notary Public, State of New York**  
**No. 01MA4950922**  
**Qualified in New York County**  
**Commission Expires May 8, 2019**



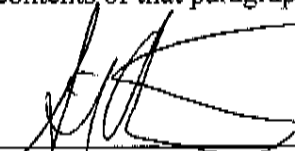
VERIFICATION

STATE OF NEW JERSEY                    )  
  )  
COUNTY OF NEW JERSEY                ) ss.:

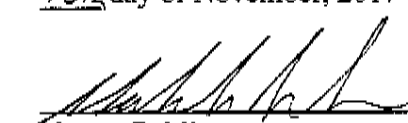
*Union*

Stephen B. Brotman, being duly sworn, deposes and says:

1. I am an authorized representative of plaintiff Alpha Annex Outcome Health Fund LLC, Alpha Venture Partners Fund, L.P., and Alpha Venture Partners Fund II, L.P. (collectively, "AVP"), plaintiffs in the above entitled action. I have read the foregoing Complaint, and know the contents thereof. The contents of the paragraphs concerning AVP's investment, corporate form due diligence, and reliance are true to my own knowledge, and as to the paragraph stating AVP's belief that it has been defrauded, I believe the contents of that paragraph to be true.

  
\_\_\_\_\_  
Name: Stephen B. Brotman  
Title: Manager

Sworn to before me this  
10<sup>th</sup> day of November, 2017

  
\_\_\_\_\_  
Notary Public

MALCOLM W. LEE  
Notary Public of New Jersey  
ID# 50059340  
My Commission Expires April 26, 2022

# **EXHIBIT K**





Business

# Outcome Health investors receive DOJ subpoenas as Chicago-area hospitals back away



Outcome Health President Shradha Agarwal, left, and CEO Rishi Shah. Founded as ContextMedia in 2006, the medical advertising firm exploded in growth. Now investors are accusing it of lying about its performance to **sec**ure a nearly \$500 million in funding. (Blue Sky photos)

By **Lisa Schencker and Ally Marotti** · **Contact Reporters**  
Chicago Tribune

NOVEMBER 10, 2017, 6:00 AM

**T**he Justice Department is subpoenaing investors in Chicago-based Outcome Health in the wake of a lawsuit accusing the prominent health information and advertising startup of committing fraud to **sec**ure nearly \$500 million in funding.

The orders from federal investigators, revealed in court documents filed by investors Thursday, come as hospitals and health care advertisers back away from the fast-growing company, which places interactive screens and tablets in doctors' offices. The court filing indicates investors also anticipate inquiries from the **Sec**urities and Exchange Commission.

The investors — including units of Goldman Sachs and Google and a fund co-founded by gubernatorial candidate J.B. Pritzker — sued Outcome Health, CEO Rishi Shah and President Shradha Agarwal on Tuesday in New York. The lawsuit followed a Wall Street Journal report last month that said some Outcome Health employees charged pharmaceutical companies for ads on more video screens than the company had installed.

Outcome Health has denied the lawsuit's allegations and has hired former U.S. Attorney Dan Webb to review issues raised in the Journal's story.

"The company is committed to fully cooperating with any government investigation," Outcome Health attorney Sanford Michelman said in a statement.

The Justice Department and the **SEC** did not respond Thursday to requests for comment.

Earlier Thursday, representatives of Downers Grove-based Advocate Health Care and west suburban hospital system Edward-Elmhurst Health said they are pausing plans to expand their use of Outcome Health's technology. The company's screens run educational content about health topics for patients as well as advertisements from drug companies. The screens and educational content are free to doctors. Outcome Health makes money off the ads.

Advocate, Illinois' largest hospital system, has about 500 of the Outcome Health devices now, mainly in outpatient settings, Advocate spokeswoman Lisa Lesniak said.

"We are monitoring the situation closely. In the meantime, we've paused plans to expand screen installation," Lesniak said in an email.

Edward-Elmhurst, which just announced its partnership with Outcome Health this month, is backing away from its previous plans to roll out the technology systemwide. Elmhurst Hospital's Nancy W. Knowles Cancer Center has been using the technology since June, and the system also has Outcome Health wallboards in nearly a dozen other physician offices throughout the system, spokesman Keith Hartenberger said.

"We partnered with Outcome Health because of the company's mission to educate and empower patients, and its alignment with our own vision to transform the health care experience," Hartenberger said in a statement. "In light of recent developments, however, we are putting further technology and equipment installations on hold."

In a statement spokesman John Eddy provided to the Tribune on Thursday, Outcome Health said the company remains committed to delivering "best-in-class health information to all of our medical offices and health systems."

"Outcome Health's physician network continues to grow — in just the last three weeks, we have added several hundred medical offices and thousands of new devices to our BPA Worldwide-certified network of 140,000-plus digital devices," the statement said, referring to the Connecticut-based media auditing firm.

Beginning early this year, the company received its first round of outside venture capital investments, which totaled \$487.5 million and included \$100 million from a Goldman Sachs-managed fund and \$50 million each from Pritzker's fund, a fund tied to Google parent Alphabet and one affiliated with Emerson Collective, an organization run by Laurene Powell Jobs, according to the investors' lawsuit.

That funding valued the company at about \$5.5 billion and landed CEO Shah on the Forbes 400 ranking of the richest Americans, with an estimated net worth of \$3.6 billion.

The company and its lawyers have said the claims of the investors' lawsuit have no merit.

In recent days, a number of major advertisers and agencies also said they pulled tens of millions of dollars in ads from Outcome Health, and a top executive resigned from the company.

Since the Journal story, the company has denied routinely misreporting information to customers and has placed three employees on leave. It hired Webb, the former U.S. attorney, to conduct an internal review of the allegations. It also said it is reviewing more than 250 ad campaigns that ran on its network this year and plans to turn files over to a third-party auditor for independent verification.

According to a court document filed Wednesday by a lawyer representing Shah and Agarwal, Webb participated in a conference call Monday regarding the investigation and reported that he has not found evidence that senior management, including Shah and Agarwal, were involved in or aware of misconduct.

Outcome Health earned a reputation in recent years as one of Chicago's most promising tech startups. The company launched in 2006 while Shah and Agarwal were students at Northwestern University. The funding raised by Outcome Health earlier this year put the company in the national spotlight.

*lschencker@chicagotribune.com*

*amarotti@chicagotribune.com*

*Twitter @lschencker*

*Twitter @allymarotti*

## RELATED:

**Major investors sue Outcome Health, alleging firm committed fraud to **sec**ure \$487.5M investment »**

**Health care companies pull ads from Outcome Health's screens amid internal investigation »**

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## Trending on Chicago Tribune



Business / Business Columnists / Ryan Ori

## Column: Chicago's Vista Tower could get new owner amid Chinese government crackdown



By Ryan Ori



# **EXHIBIT L**

**From:** Linsey Bierschbach [linsey.bierschbach@contextmediainc.com]  
**Sent:** Monday, August 10, 2015 7:45 AM  
**To:** Marshall Shen  
**CC:** Randy Gorecki; Lee Ebreo; Lisa Wolkoff  
**Subject:** Re: Patient Portal Analytics

I do not need daily reporting. I am just looking for a snapshot to show the numbers we have subscribed and what the signup and opt out numbers look like (is it growing and at what rate?). From a sales perspective knowing how many people sign up for the daily texts shows actual numbers behind patient engagement. Patients are not only watching the programming, but are also interested in the content and sign up to continue receiving that content. That is why I am looking for the specifics.

On Mon, Aug 10, 2015 at 8:36 AM, Marshall Shen <[marshall.shen@contextmediainc.com](mailto:marshall.shen@contextmediainc.com)> wrote:

Hi Linsey:

Also can you help us clarify the purpose of the daily SMS reporting?

Thanks!

---

Sent from [Mailbox](#)

On Fri, Aug 7, 2015 at 5:09 PM, Marshall Shen <[marshall.shen@contextmediainc.com](mailto:marshall.shen@contextmediainc.com)> wrote:

Hi all:

A quick update on reporting on SMS health tips service (Health Blaster):

1. I'm actively developing it as I'm writing this email. Once again to verify what we need on the report:

Given one day we sent out SMS to subscribers, we want:

- a. The number of CMH TIPS messages successfully send (excluding welcome messages for subscription and feedback message. for unsubscription.)
- b. The number of CMH TIPS messages failed to send (excluding welcome messages for subscription and feedback message. for unsubscription.)
- c. The number of unsubscriptions.

2. Before reporting, we have multiple features we need to rollout to production. We scheduled to QA those features on Monday morning and plan to roll it out on Monday if all is well. The reporting is going to ship after the feature deploy because the reporting depends on those features in production.

Let me know if you have any questions!

Have a great weekend!

---

Sent from [Mailbox](#)

On Thu, Aug 6, 2015 at 4:41 PM, Marshall Shen <[marshall.shen@contextmediainc.com](mailto:marshall.shen@contextmediainc.com)> wrote:

Hi Randy:

We don't have any analytics built around health tip service yet. It's going to be my focus this Friday & Monday to provide some basic reporting around:

- 1) Sms received by users daily
- 2) Unsubscription activity and why people unsubscribe.

I will keep you guys posted on the progress, if by the end of Monday you still haven't heard anything, give me a holler!

Cheers,  
Marshall

—  
Sent from [Mailbox](#)

On Thu, Aug 6, 2015 at 4:18 PM, Randy Gorecki <[randy.gorecki@contextmediainc.com](mailto:randy.gorecki@contextmediainc.com)> wrote:

I can definitely pull the counts for patient portal types (Mixpanel event: custom-website-tap). Are you interested in a specific system, clinic, etc?

Marshall/Lee,

Is there any analytics around SMS?

On Thu, Aug 6, 2015 at 4:14 PM, Linsey Bierschbach <[linsey.bierschbach@contextmediainc.com](mailto:linsey.bierschbach@contextmediainc.com)> wrote:

Hi Randy!

Ryan had mentioned that you could pull data on how many clicks we get on the patient portal on each tablet per day. Is that data you can pull or are there any analytics you can pull related to patient portal?

He also had mentioned that we have 11,000 patients signed up for our healthy tip of the day text. Do you have additional figures in terms of how often people subscribe, unsubscribe, how quickly that number grows, etc.? Also - what are some example tips go out on that text?

Thanks!

Linsey

--

□ **Linsey Bierschbach**

Wellness Solutions Consultant, Integrated Health Systems

[www.contextmediahealth.com](http://www.contextmediahealth.com)

O: [312.881.4884](tel:312.881.4884) / C: [312.550.7544](tel:312.550.7544)

330 N. Wabash Ave. STE 2500

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□

**Randy Gorecki**

Product Analytics Manager

[www.contextmediahealth.com](http://www.contextmediahealth.com)

C: [\(708\) 217-8861](tel:(708)217-8861)

330 N. Wabash Ave. STE 2500

Chicago , IL 60611

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□

**Linsey Bierschbach**

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**GZJ KDK'O'''**





News / Watchdog

# Outcome Health's problems with sales pitches go back years



Outcome Health President Shraddha Agarwal, left, and CEO Rishi Shah. Founded as ContextMedia in 2005, the medical advertising firm expanded its growth. Now investors ask accusing it of lying about its performance to secure a nearly \$500 million in funding. (Blue Sky photo)

By Patricia Callahan • Contact Reporter  
Chicago Tribune

NOVEMBER 20, 2017, 8:00 AM

Long before investors poured nearly \$500 million into Outcome Health, executives at the Chicago startup time and again reprimanded salesmen for making misleading or inaccurate claims, records show.

Outcome, which pitches doctor's offices free health-related programming and ads on TVs and tablets it provides, was once considered among Chicago's most promising tech startups.

The company now is facing a court battle with major investors, including units of Goldman Sachs, Google-parent Alphabet Inc. and a venture capital fund co-founded by Illinois gubernatorial candidate J. B. Pritzker. They sued Outcome and founders Rishi Shah and

misrepresentation in a "scheme to mislead

Outcome reaped millions from prescription drug ads that ran on screens in medical waiting rooms and exam rooms for a captive audience of patients. Trouble came to light last month after a Wall Street Journal investigation, citing internal company documents and anonymous sources, alleged Outcome Health had misled pharmaceutical clients about the number of screens in doctors' offices that showed their ads from 2014 through 2016 and inflated data on how well the ads performed.

But court records reveal that senior management at Outcome Health had grappled with issues of dishonesty among members of its sales team years before that time frame, as its representatives made sales pitches to another important client: the medical practices that would showcase the screens.

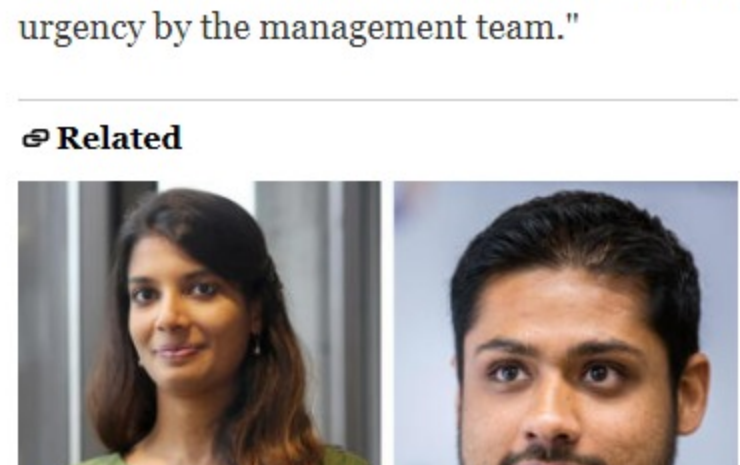
Depositions in a federal civil suit filed by a competitor show that members of Outcome's sales staff made untruthful or misleading statements to doctors' offices between 2010 and 2013, when the company was known as ContextMedia. The depositions included the testimony of ContextMedia salesmen and executives as well as the content of emails, as read aloud by attorneys.

The lawsuit was filed in 2012 by Healthy Advice Networks. Depositions from that case have been available online in a public court file since August 2014 — 2 1/2 years before the investors now suing Outcome Health poured money into the company.

Davidson Goldin, a spokesman for Outcome Health, said in an emailed statement that the company "has a high ethical standard and terminates employees for violating policies when necessary." He added that Outcome Health salespeople each typically have engaged in more than 100 pitches a day to medical practices.

"Drawing conclusions from a court case resolved years ago that identified a small number of mistakes by salespeople early in their careers is misleading, especially because this involved such a tiny fraction of the 40,000 physician offices that the company serves," Goldin wrote. "The record also shows that in each instance the situation was handled with urgency by the management team."

## Related



Major investors sue Outcome Health, alleging firm committed fraud to secure \$487.5M investment

The reprimands of sales staff coincide with the company's earliest days of expansion. Between 2010 and 2016, ContextMedia increased its network from a few hundred hospitals and clinics to over 10,000, Chief Operating Officer Bradford Purdy said under oath in a 2016 court filing in a different lawsuit.

Red flags first appeared in 2010, not long after ContextMedia launched a new product, the Rheumatoid Health Network. There were two sales teams at ContextMedia — one that pitched screens to doctors' offices and another that sold ads to prescription drug makers.

In the latter half of 2010, ContextMedia CEO Shah decided the company should go head-to-head with competitors who already had their screens in doctors' offices, according to the testimony of James Demas, who was ContextMedia's chief financial officer at the time.

As sales representatives worked to convince physician groups to switch to ContextMedia, Demas informed Shah and Agarwal in a December 2010 email that he overheard a new contract sales employee making an untruthful claim that the company had an agreement with a competitor, Healthy Advice Networks, according to Demas' deposition.

"I heard Matt Garmis on the phone telling an office that we have an agreement with Healthy Advice whereby we remove their screens and ship them back to Healthy Advice," Demas wrote. "The messaging is false and misleading."

ContextMedia, which had only 10 employees back then, had no such arrangement.

Key portions of a Healthy Advice agreement with a medical practice — read aloud during Demas' deposition — said the doctors' office had to keep the monitors running for a minimum of six months and then could only cancel with 30-days' written notice. Under the terms, the medical practice was not allowed to remove the equipment or even unplug it unless it had written permission from Healthy Advice, which is now known as PatientPoint.

Demas testified that "Shah raised the issue of wanting to go in and switch out," and Demas came up with the idea of developing an authorization form that ContextMedia would ask physician practices to sign before taking down a competitor's screens.

The plan, Demas said in his deposition, was for ContextMedia to ship the old equipment from the physician practice directly back to Healthy Advice.

"Hey guys," Demas wrote to Shah and Agarwal, who was then chief marketing officer. "I've written this to appear as an installation/de-installation authorization."

In his deposition, Demas explained why he developed the form: "I wanted to make sure that we had the authorization of the office before we took something down that was on their property."

Demas, who left ContextMedia in 2015, declined to comment.

Shah's deposition was filed under seal, but portions of it were included as an exhibit to a public filing. That exhibit shows Shah testified ContextMedia had assured medical practices that its switch-outs would be "hassle-free" so they could "pick the product that they wanted to pick."

ContextMedia later put Garmis, the salesman whose call alarmed Demas, in charge of supervising and training a small sales team whose duties included pitching switch-outs to physician practices.

Shah testified the company corrected Garmis during his first month on the job and Shah had not seen any other instances of Garmis making false or misleading statements after that. Likewise, COO Purdy testified that Garmis sat in the middle of the sales team and if Garmis "heard anything that was factually incorrect, he would have a direct conversation with them to correct it."

Reached by phone, Garmis, who still works at Outcome Health, told a reporter to call back but then didn't respond to a subsequent call or email seeking comment.

ContextMedia records and testimony show several sales associates who reported to Garmis made misrepresentations to doctors' offices.

In a 2012 email read aloud during Purdy's deposition, a ContextMedia salesman made it sound like Healthy Advice had ceded its rheumatology business to his company. "I will call Healthy Advice for you, so don't worry about that," the salesman wrote to a medical practice. "We have an agreement with them that we are much more suited for rheumatoid clinics."

Asked about this in the civil suit brought by Healthy Advice, Purdy called that email "very inaccurate" and "one of the worst forms of hyperbole."

"I don't have any idea how he came up with that," Purdy testified.

In that same deposition, Purdy called the inaccurate sales material created by another salesman "rogue."

A different salesman in 2011 misrepresented to a medical practice the nature of the advertising that would appear on the company's Diabetes Health Network screens. "Our ads, which are all from diabetes advocacy organizations, have the least amount of airtime in the industry," wrote ContextMedia salesman Patrick Cavanna.

Questioned in his deposition about whether drug companies are advocacy organizations, Cavanna answered: "I guess I misunderstood what advocacy meant at the time."

Cavanna in his testimony acknowledged he once approached a competitor's booth at a trade show pretending to be an employee of prescription drug maker Eli Lilly & Co.

"Basically I borrowed a badge from Eli Lilly," Cavanna said in a deposition. "I went up to the AccentHealth booth, asked her — the rep there — what everything is about and she kind of, you know, told me everything, handed me some material."

Jenna Loewe, who was a ContextMedia brand manager at that time, testified that she yelled at Cavanna and he "came across as very remorseful for his actions."

In Loewe's deposition, an attorney read from an email Loewe sent to CEO Shah and CFO Demas notifying them of the situation. In that email, Loewe said she planned to return the materials to AccentHealth and let the competitor know "this is not how we play the game."

"My initial thought is to come into the office tomorrow before the show and make copies and burn the programming disk," she wrote in that email.

An attorney for Healthy Advice asked her why she wanted to make copies.

Loewe described a conversation she had with Cavanna's boss, Garmis: "We were like, 'Well, if we have the materials, might as well make a copy of it before returning.'"

Referring to the email trail between Loewe and Shah, the attorney asked, "And Rishi essentially tells you to do the same, is that right, on the first page?"

"Yes," Loewe replied.

"And is that what happened?" the attorney asked.

"Yes," Loewe said.

She testified that she scanned the paper materials Cavanna had collected and put them on the ContextMedia server in a competitive intelligence folder. The company, she said, also uploaded the programming disc.

The dates of the trade show and of the copying are not clear from court records, but these events had to have happened between August 2011, when Cavanna was hired, and September 2012, when Loewe was laid off in a downsizing of the marketing department.

Loewe declined to comment for this story.

Goldin, the Outcome Health spokesman, wrote in his response to the Tribune:

"When Rishi (Shah) learned of this individual salesperson's inappropriate conduct he immediately contacted the CEO of the competitor to inform him of this incident, apologize for it and arrange for a remedy of the situation. Outcome Health and its leadership view integrity as a core principle, and while they believe in robust competition they have never authorized crossing the line into unethical behavior."

Cavanna testified that Shah, Agarwal, Demas and Garmis at the time all told him "very sternly" not to do that again.

In addition, Cavanna testified he was reprimanded "numerous times."

He said he was corrected by Shah, Agarwal and Demas for "saying stuff that was, you know, wrong about our competitor, if we were saying stuff that was wrong about our content."

Cavanna, who still works at Outcome Health, did not respond to a Tribune reporter's emails seeking comment.

Misrepresentations continued even after supervisors tried to rein in the sales representatives.

ContextMedia executives again and again corrected members of the sales team when they were overheard telling medical practices that Healthy Advice's programming loop was half advertising. The pitch they were making was that ContextMedia had far less advertising, which would be more appealing to patients.

Loewe, who was then a brand manager, let salesmen Brok Vandersteen and Cavanna know that the true proportion of advertising in Healthy Advice's programming was 30 percent.

"Any time I got wind of anything like this, I would get up and go over to their desk, talk to them, reiterate why it's important that we use only information that we can support," Loewe said in her deposition.

Vandersteen thanked Loewe for clarifying the matter but the next day sent a note to a physician practice denigrating the Healthy Advice programming because "half of it is advertising."

"It wasn't a true statement, was it, that half of Healthy Advice's slide or loop was advertising?" an attorney asked Vandersteen during his deposition.

"I don't suppose it was," he replied.

Vandersteen's misstatements in 2013 caught the attention of Demas, Vandersteen testified.

"Jim Demas had pulled the sales team in to have a meeting and said that it had come to his attention that we were saying things that weren't true, and told us that it needed to stop," Vandersteen explained in his deposition.

Even after that meeting, Vandersteen testified he continued to make that untruthful claim to doctor's offices, prompting a second meeting — this time with Demas, Shah and Agarwal. "I think it came to light that I had said specifically certain things that weren't true, and that I needed to stop," Vandersteen explained.

Emails read aloud in depositions show Vandersteen also boasted to physician practices that his company had switched out far more of Healthy Advice screens in offices than it really had. In 2011, the company had converted 64 practices from Healthy Advice Network to ContextMedia, records show.

In various emails to physician offices in January 2012, however, Vandersteen said his company had switched screens at far more rheumatology facilities from Healthy Advice to ContextMedia. The numbers he gave ranged from 150 to 350.

"Were you just kind of picking numbers out of the air?" an attorney for Healthy Advice asked him.

"I suppose so," Vandersteen answered. "It was an exaggeration."

Vandersteen, who still works at Outcome Health, did not respond to emails or a phone call seeking comment.

Of the salesmen, Outcome Health spokesman Goldin wrote: "These employees learned from their mistakes and the training they received, evolving into respected industry leaders with integrity."

Shah, Agarwal and Purdy declined to comment beyond what was in the company's statement, Goldin said.

In March 2013, ContextMedia reached an agreement with Healthy Advice calling for each company to handle its own equipment in switch-outs, Purdy testified.

By then, the federal suit with Healthy Advice was well underway. After more than three years of heavy litigation, ContextMedia in December 2014 agreed to pay an out-of-court settlement of an undisclosed amount to Healthy Advice, court records show.

In 2016, ContextMedia filed a federal suit of its own against a different competitor over switching out equipment, alleging AccentHealth had engaged in fraud, false advertising and deceptive business practices.

The allegations had a familiar ring: ContextMedia accused AccentHealth of making "false and misleading statements ... with the express intent to mislead both existing and potential ContextMedia customers."

In a legal filing, ContextMedia used the words "immoral," "unethical" and "unscrupulous" to describe AccentHealth's conduct.

A federal judge dismissed the case, saying it didn't belong in federal court. ContextMedia didn't give up; the following week it filed suit in Illinois circuit court.

Then five months later, ContextMedia turned around and bought AccentHealth.

Chicago Tribune's Ally Marotti contributed to this report.

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